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Superfund Records Center  
SITE: Peterson/Puritan  
BREAK: 11.9  
OTHER: 211087

July 8, 2004

**VIA FEDERAL EXPRESS**

U.S. EPA Records Center  
c/o Peterson/Puritan, Inc. Superfund Site  
1 Congress Street  
Boston, MA 02114-2023

Attention: Michael Jasinski

Re: Request for Information Pursuant to Section 104 of CERCLA for  
Operable Unit Two of The Peterson/Puritan, Inc. Superfund Site in  
Cumberland, Rhode Island

Dear Mr. Jasinski:

I am writing on behalf of General Cable Corporation ("General Cable"), which recently received a letter dated June 17, 2004 regarding the above-referenced subject, addressed to Collier Wire, c/o BICC/General Cable Corporation, Peter Zinkin, President. We believe that your request for information regarding the Peterson/Puritan, Inc. Superfund Site (the "Site") has been misdirected.

As explained in more detail in the attached copy of our June 15, 2004 letter to EPA's Region IX office regarding the Operating Industries, Inc. Landfill Superfund Site, neither General Cable nor any of its subsidiaries have ever owned or acquired any interest in Collyer Insulated Wire, which we assume to be the same entity as the Collier Wire to which your June 17<sup>th</sup> letter was addressed. As the enclosed documents indicate, any relationship which may have existed with Collier/Collyer Wire would, have been with BICC Cables Corporation ("BICC") and not General Cable.

If EPA wishes to contact BICC regarding this matter, we understand that its current address is BICC Cables Corporation, c/o Balfour Beatty, Inc., 2325 Dulles Corner Boulevard, Suite 500, Herndon, VA 20171, Attention: David R. Hodnett, Esq.

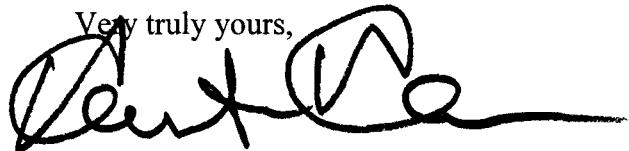
As you may be aware, General Cable's wholly owned subsidiary, General Cable Industries, Inc., has, by letters dated January 26, 1999 and January 29, 2003, responded to an

U.S. EPA Records Center  
Attention: Michael Jasinski  
July 8, 2004  
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earlier EPA request for information regarding Operable Unit Two of the Peterson/Puritan, Inc. Site. General Cable has no information to add to these prior responses.

Please contact me if you have any further questions regarding this matter.

Very truly yours,



Kenneth N. Klass

KNK:pb  
Enc.

cc: Robert J Siverd, Esquire, General Cable Corporation (w/attch)  
Michelle Lauterback, Esq. (w/attch)  
Enforcement Counsel  
U.S. Environmental Protection Agency  
1 Congress Street  
Suite 1100 (SES)  
Boston, MA 02114-2023

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June 15, 2004

**VIA FEDERAL EXPRESS**

Lois Green, Case Developer  
Mail Code SFD-7-3  
United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Re: OPERATING INDUSTRIES, INC. LANDFILL

Dear Ms. Green:

We represent General Cable Corporation ("GCC"), a recipient of the United States Environmental Protection Agency's ("EPA") General Notice Letter to Potentially Responsible DeMinimis Parties, dated September 5, 2003.

It is our understanding that EPA identified GCC as a potentially responsible party ("PRP") at the Operating Industries, Inc. Landfill Superfund Site ("OII"), based upon its belief that GCC is responsible for wastes disposed of by a company known as Collyer Insulated Wire ("Collyer"). This was confirmed in a call to EPA's de minimis party telephone number, during which Ms. Deborah Hiller of SAIC advised that EPA's OII database identifies Collyer as having disposed of 7350 gallons of waste from a facility located at 17006 Figueroa in Gardenia, California, in June 1982. We were further advised that EPA's OII database identifies BICC Cables Corporation ("BICC") as having acquired Collyer and GCC as having acquired BICC.

We have discussed this with our client and have been advised that neither it nor any of its subsidiaries have ever owned or acquired any interest in Collyer or operated any of Collyer's facilities, including the Gardenia, California location identified in EPA's database. While GCC's subsidiary, GK Technologies Incorporated ("GK"), did purchase certain U.S. and Canadian assets of BICC pursuant to an Assets Sale and Purchase Agreement dated April 16, 1999, no interest in Collyer was either sold or acquired in this transaction. A copy of this

Lois Green, Case Developer  
June 15, 2004  
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Agreement is attached for your information. As you will see from Schedule 1 thereto, none of the purchased assets were located in California.\*

To confirm this, GK contacted BICC and inquired as to any relationship between BICC and Collyer. BICC responded with the following information:

1. BICC is the successor in interest to Cablec Corporation ("Cablec").
2. On November 1, 1985, Cablec purchased specific assets from Wickes Manufacturing Company ("Wickes"). Collyer was a division of Wickes at the time of that purchase. A copy of the Cablec-Wickes Asset Purchase Agreement ("APA") is enclosed.
3. The assets purchased by Cablec related to a single facility located in Lincoln, Rhode Island. See Recital B of the APA.
4. The assets purchased by Cablec consisted solely of certain sales orders, equipment and machinery, patents and other intellectual property, reels and bobbins and inventories of raw materials. See Section 1.2 of the APA.
5. The Rhode Island facility itself was not purchased or operated by either Cablec or BICC.
6. The only liabilities accepted by Cablec under the terms of the APA related to the completion of those sales orders and copper futures which were included among the assets purchased. See Section 2.2 of the APA.
7. Any wastes which Collyer may have disposed of at OII is not attributable to BICC.

Under the circumstances described above, including the fact that the 1982 disposal by Collyer occurred some six (6) years prior to Cablec's limited asset purchase and seventeen (17) years before the GK transaction, it is evident that neither GCC nor GK owned nor succeeded to an ownership interest in Collyer, controlled its operations or was otherwise responsible, directly or indirectly, for Collyer's waste disposal activities. Consequently, neither GCC nor GK can have any liability in connection with the OII site.

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\* Please note that we have not included the other schedules to this Agreement because of their large number and lack of relevance to the identity of the assets purchased.

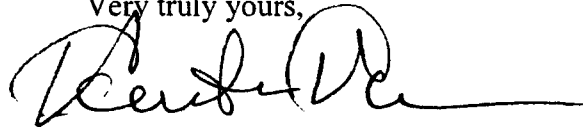
Lois Green, Case Developer  
June 15, 2004  
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We request, therefore, that EPA delete GCC's name from the OII PRP list and confirm in writing that it no longer considers GCC to be a PRP with respect to the OII site.

We would like to resolve this matter before EPA's resources become diverted by the de minimum settlement offer process which we understand will soon begin. Your immediate attention to our request will, therefore, be greatly appreciated.

Please do not hesitate to contact me if you have any questions concerning this matter.

Very truly yours,



Kenneth N. Klass

KNK:pb

cc: Robert J. Siverd, Esquire (u/sive)

ASSET PURCHASE AGREEMENT

DATED NOVEMBER 1, 1988,

BETWEEN

WICKES MANUFACTURING COMPANY, AS SELLER

AND

CABLEC CORPORATION, AS PURCHASER

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## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made November 1, 1988, between Wickes Manufacturing Company, a Delaware corporation ("Seller") and Cablec Corporation, a Delaware corporation ("Purchaser").

### R E C I T A L S

A. Seller, through its Collyer Insulated Wire Division, manufactures and markets electrical cable and wire (the "Business") from premises located in Lincoln, Rhode Island (the "Premises").

B. Seller desires to sell to Purchaser certain of the assets of Seller relating to the Business, and Purchaser desires to purchase said assets from Seller, all on the terms and subject to the conditions contained in this Agreement.

### A G R E E M E N T S

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### ARTICLE I

##### Purchase and Sale of Assets

1.1 Agreement to Purchase and Sell. On the terms contained in this Agreement, Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, certain of the assets, properties and rights owned by Seller which are used in or relate

to the conduct of the Business. All of said assets, properties and rights are collectively referred to in this Agreement as the "Purchased Assets". All of the Purchased Assets shall be sold to Purchaser free and clear of any liens, title claims, encumbrances or security interests.

1.2 Enumeration of Purchased Assets. The Purchased Assets shall consist of all of Seller's right, title and interest in and to the following assets of the Business:

(a) the Sales Orders (as herein defined);

(b) all items of equipment and machinery enumerated on Exhibit B, attached hereto, together with (i) all spare and replacement parts therefor and (ii) all machinery prints, technical papers, maintenance and asset records with respect thereto to the extent available (the "Machinery"); provided, however, that at any time prior to the time at which an item of Machinery is to be delivered to Purchaser pursuant to Section 3.3, Purchaser, by written notice delivered to Seller, may eliminate from the Machinery any item enumerated on Exhibit B, whereupon the purchase price of the Machinery, as enumerated on Exhibit B, shall be correspondingly reduced;

(c) all patents and applications therefor, trademarks and applications therefor, service marks and applications therefor, trade names (including the name "Collyer"), know-how, trade secrets, formulas, customer lists and records, advertising and promotional material, and Seller's rights related to qualifications and approvals given by Seller's customers with respect to products of the Business (collectively the "Intangibles");

(d) those reels and bobbins enumerated on Exhibits C (Steel Reels and Bobbins At Collyer) and C-1 (Steel Reels At Customers), attached hereto (the "Reels and Bobbins"); provided, however, that at any time prior to the time at which an item of Reels and Bobbins is to be delivered to Purchaser pursuant to Section 3.3, Purchaser, by written notice delivered to Seller, may eliminate from the Reels and Bobbins any item enumerated on Exhibits C and C-1, whereupon any applicable total purchase price of the Reels and Bobbins, as enumerated on Exhibits C and C-1, shall be correspondingly reduced;

(e) the following inventories of the Business (the "Inventory");

(i) all non-copper raw materials inventory that is fresh, in original, unopened containers, and inventory purchased from Teledyne Thermatics consisting of Mica-Kapton singles, in each case accompanied by certified test reports (as required), and which, in Purchaser's sole opinion, is useable by Purchaser and/or Purchaser's affiliates, Cablec Industrial Cable Company and Continental Wire and Cable Company, and which is on hand at such time as Seller has completed the orders received by the Business which are not included in the Sales Orders (the "Retained Orders"); and

(ii) all copper raw material inventory applicable to the Sales Orders and which, in Purchaser's sole opinion, is useable by Purchaser to fill the Sales Orders; and

(f) Seller's rights under those copper futures contracts enumerated in Exhibit D, attached hereto (the "Copper Futures").

1.3 The Sales Orders. Seller and Purchaser agree as follows with respect to the Sales Orders:

(a) The Sales Orders shall consist only of (i) all open sales orders of Seller listed on Exhibit A attached hereto and not lined out, and (ii) each sales order of Seller not listed on Exhibit A which arises from a quotation given by the Business on or prior to the Closing Date (as herein defined) which was accepted by such customer in accordance with the terms of such quotation and acknowledged by Seller on or after the Closing Date, whose Variable Contribution (as herein defined) is at least equal to 25% of the acceptance price (after subtracting freight and shipping costs and sales taxes) on such sales order.

(b) The Variable Contribution of a sales order resulting from an outstanding quotation shall be equal to the acceptance price, after subtracting freight and shipping costs and sales taxes, less the Variable Cost of such sales order. The Variable Cost of a sales order resulting from an outstanding quotation shall be equal to the sum of material and direct labor costs plus variable manufacturing overhead and selling costs on such sales order. Purchaser and Seller shall jointly make all computations of costs required hereunder consistently with past policies of the Business, using Seller's 1988 standard costs as in effect on the date hereof; provided, however, that the cost of copper rod used in such computations shall be the price of copper rod at the

time the relevant quotation was accepted by the customer and acknowledged by Seller. As so determined such computations shall be binding upon both parties hereto in the absence of a dispute. Any dispute as to whether such computations were prepared consistently with such past policies shall be arbitrated in the manner set forth in Section 3.4.

(c) The foregoing notwithstanding, the Sales Orders shall not include sales orders for wire and cable (i) which Purchaser and its affiliates are not qualified to make; or (ii) as to which the production of such wire and cable has commenced on or prior to the Closing Date.

(d) This Agreement shall not constitute an agreement to assign any rights or assume any obligations under any Sales Order or any claim, right, benefit or obligation arising thereunder or resulting therefrom, if an attempted assignment or assumption thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights or privileges of Purchaser or Seller thereunder. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would affect the rights of Seller thereunder so that Purchaser would not in fact receive all such rights and privileges, Seller shall cooperate with Purchaser in any arrangement necessary to provide that Purchaser shall receive the benefits under any such Sales Order, including enforcement at the cost of Seller and for the benefit of Purchaser of any and all rights of Seller against a third party thereto arising out of the breach thereof by such third party or otherwise; and any transfer or assignment to Purchaser by Seller of any rights or obligations under any Sales Order which shall require the consent of any third party, shall be made subject to such consent being obtained and Seller agrees to use its best efforts to obtain such consent. Seller hereby appoints Purchaser to act as Seller's agent to perform, and Purchaser hereby agrees to perform as Seller's agent, all Sales Orders where such consent cannot be obtained. As payment for such performance is received by Seller, such payment shall be forthwith delivered by Seller to Purchaser. Purchaser shall indemnify, save and keep Seller forever harmless against and from all liability, demands, claims, actions or causes of action, assessments, losses, penalties, costs, damages or expenses, including reasonable attorneys and expert witness fees, relating to or arising as a result of Purchaser's performance as Seller's agent hereunder. Anything in this Agreement to the contrary notwithstanding, Seller shall have no liability to Purchaser in the event that any buyer on any Sales Order refuses to permit Purchaser to perform such Sales Order.

ARTICLE II

Assumption of Liabilities

2.1 Agreement to Assume. At the Closing (as herein defined), Purchaser shall assume and agree to discharge and perform when due, the liabilities and obligations of Seller with respect to the Business which are enumerated in Section 2.2 (the "Assumed Liabilities"). Seller shall pay and discharge when due all of its liabilities other than the Assumed Liabilities.

2.2 Description of Assumed Liabilities. The Assumed Liabilities shall consist solely of the liabilities and obligations of Seller with respect to completion of Sales Orders and Copper Futures assigned to Purchaser pursuant to this Agreement. Without limiting the generality of the preceding sentence, Purchaser does not assume any <sup>damages or penalties</sup> ~~liability~~ resulting from any failure of Seller, prior to the Closing Date, to (i) perform any Sales Order in accordance with the terms thereof or (ii) take such ~~production~~ steps as would be necessary in the ordinary course of the Business in order for Seller to have performed any Sales Order in accordance with the terms thereof if the transaction contemplated hereby had not occurred.

*with the result that Purchaser could not reasonably complete said Sales Order in the ordinary course of Purchaser's business if Purchaser had originally accepted said Sales Order.*

*Assumed  
Liabilities*

*CK 11/1*

*CK  
E.G. 6*

*CK E.G. 7*

## ARTICLE III

### Purchase Price, Manner of Payment and Closing

3.1 Purchase Price of Sales Orders, Intangibles and Copper Futures to be Paid on the Closing Date. The purchase price of the Sales Orders, Intangibles and Copper Futures shall be ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) which shall be paid on the Closing Date by wire transfer to Citibank, New York, New York ABA 021-000-089, for the account of Wickes Companies, Inc. Account No. 38459175. On the Closing Date, Purchaser shall also assume the Assumed Liabilities.

3.2 Purchase Price of Mica Kapton Sales Orders. The parties desire that Purchaser shall perform those certain Mica Kapton Navy Lightweight Mil 26240 Sales Orders enumerated on Exhibit A and circled in red ("the MK Sales Orders"). Promptly after the Closing Date, Purchaser and Seller shall use their best efforts to obtain the consent of the customer on the MK Sales Orders to their transfer to Purchaser. If such consent is not forthcoming Purchaser shall perform the MK Sales Orders as Seller's agent pursuant to the terms of Section 1.3(d). If Purchaser shall receive the consent of the customer on the MK Sales Orders to perform all of the MK Sales Orders, Purchaser shall, not later than 15 days after the end of the fiscal month of Purchaser in which said consent is received, pay to Seller THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) by check, together with an accompanying letter setting forth an explanation and description of said payment. If the customer on the MK Sales

Orders consents to the transfer of fewer than all of the MK Sales Orders, Purchaser shall, on receipt of such consent, pay to Seller by check, together with an accompanying letter setting forth an explanation and description of said payment, that percentage of \$300,000 which is equal to the acceptance price of the MK Sales Orders to which the consent applies divided by the total acceptance price of all MK Sales Orders. If Purchaser shall not receive any consent but instead performs the MK Sales Orders as agent for Seller, Purchaser shall, on completion of each MK Sales Order pay over to Seller the percentage of \$300,000 which is equal to the acceptance price of the MK Sales Order performed divided by the acceptance price of all MK Sales Orders. If all of the MK Sales Orders are cancelled, Purchaser shall have no further liability to pay Seller for the MK Sales Orders.

### 3.3 Subsequent Payments and Delivery of Purchased Assets.

The Retained Orders will be completed by Seller using its best efforts within four (4) months after the Closing Date unless such completion is delayed without Seller's fault. Seller and Purchaser agree that the Machinery, the Inventory and the Reels and Bobbins must be used in the completion of the Retained Orders and will not be available for delivery to Purchaser until such completion and that title to such Purchased Assets shall not vest in Purchaser until delivery. From time to time, as the Retained Orders are completed and Seller has no further need for these Purchased Assets, or any of them, Seller will give Purchaser written notice thereof, and not later than 15 days after the end

of the fiscal month of Purchaser in which such conveyance is made to Purchaser, Purchaser shall pay to Seller by check the purchase price of all Purchased Assets covered by such notice, together with an accompanying letter setting forth an explanation and description of said payment, against the receipt of a bill of sale, executed by Seller, the form of which is attached hereto as Exhibit E, conveying such Purchased Assets to Purchaser, free and clear of all liens, claims, encumbrances, and security interests not permitted by this Agreement, and containing the warranties of title set forth in this Agreement; provided further, that such bill of sale shall warrant that any item of Machinery conveyed thereby shall be in the same condition on the date of its sale as it was on the Closing Date, ordinary wear and tear accepted. Seller shall use its best efforts to deliver to Purchaser the items of Machinery on or about the dates listed for delivery of such items on Exhibit B. Upon receipt of the aforementioned bill of sale, risk of loss of the Purchased Assets covered by such bill of sale shall pass to Purchaser. Purchaser shall remove all Purchased Assets acquired by it from the Premises within six (6) months after the Closing Date or within 60 days after receiving title thereto, whichever is later; provided, however, that if Seller agrees to sell the Premises prior to the expiration of either of such periods, Purchaser must remove all of the Purchased Assets acquired by Purchaser prior to such sale, and to facilitate such removal, Seller agrees to give Purchaser at least 30 days' notice of such sale.

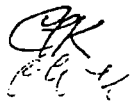


3.4 Pricing of Purchased Assets. The following Purchased Assets shall be priced as follows:

(a) Each item of the Machinery shall be priced as set forth on Exhibit B; provided, however, that notwithstanding the prices enumerated on Exhibit B, Purchaser shall receive a credit against the aggregate price of the Machinery in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) to be applied against the first items of Machinery delivered pursuant to Section 3.3 until such credit has been applied in full.

(b) Non-copper Inventory shall be priced at Seller's 1988 standard cost as in effect on the date hereof.

(c) Copper Inventory, whether in the form of copper rod, single strand wire or multi-strand wire, shall be valued at Seller's 1988 standard fabricating cost adjusted to reflect the Spot Comex price for copper shown in the American Metal Markets Daily for the business day immediately preceding the transfer of title to such copper plus \$0.0485 cents per pound for rod toll.

(d) Reels and Bobbins shall be priced in accordance with Exhibits C and C-1. Purchaser shall only be responsible for accepting delivery of Reels and Bobbins included in the Purchased Assets and held by customers of Seller, ~~and then~~ only upon (i) Purchaser having given its prior approval to the customer for the return of the Reels and Bobbins held by such customer and (ii) instructions in form and substance satisfactory to Purchaser having been given by Seller to said customer regarding delivery of said Reels and Bobbins. The foregoing notwithstanding, in all cases Seller shall reimburse any and all customers for any reel deposit liability, and Purchaser shall have no liability to Seller or any customer for the return of any such reel deposit. 

(e) Any dispute arising out of the pricing or count of any Purchased Assets shall be referred for binding arbitration to a "Big Eight" accounting firm other than Arthur Andersen & Co. selected by the president of the Rhode Island Board of Accountancy, or if he shall be unable or unwilling to act, any vice-president, the treasurer or the secretary (in that order) who is able and willing to act. The party against whom such arbitration is decided shall bear the cost of such arbitration.

(f) Seller hereby grants to Purchaser access to the Premises after the Closing Date for the purpose of removing any of the Purchased Assets from the Premises following

their acquisition by Purchaser. Purchaser agrees to pay the cost of repair of any damage to the Premises caused by Purchaser's negligence in such removal.

3.5 Time and Place of Closing. The transactions contemplated by this Agreement shall be consummated (the "Closing") at 10:00 a.m., prevailing business time, at the offices of Altheimer & Gray, 10 South Wacker, Suite 4000, Chicago, Illinois 60606 on the date hereof (the "Closing Date").

#### ARTICLE IV

##### Representations and Warranties

4.1 General Statement. The parties make the representations and warranties to each other which are set forth in this Article IV. All such representations and warranties, other than Section 4.3(f), shall survive the Closing for a period of twelve (12) months, Section 4.3(f) shall survive without limitation, and all representations and warranties shall survive regardless of any investigation or lack of investigation by any of the parties to this Agreement. No representations or warranties shall merge with any instruments of conveyance. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty.

4.2 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller that:

(a) Purchaser is a corporation duly organized, existing and in good standing, under the laws of the State of Delaware.

(b) Purchaser has full corporate power to enter into and perform this Agreement. The execution and delivery by Purchaser of this Agreement and the performance by Purchaser of all of its obligations under this Agreement have been duly authorized and approved by Purchaser's Board of Directors. This Agreement has been duly executed and delivered by duly authorized officers of Purchaser.

(c) No consent, authorization, order or approval of, or filing or registration with, any governmental authority or other person is required for the execution and delivery of this Agreement and the consummation by Purchaser of the transaction contemplated by this Agreement.

(d) Neither the execution and delivery of this Agreement by Purchaser, nor the consummation by Purchaser of the transaction herein contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of Purchaser's Certificate of Incorporation or By-laws, or of any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any court or governmental authority or of any arbitration award.

(e) Purchaser is not a party to any unexpired, undischarged or unsatisfied written or oral contract, agreement, indenture, mortgage, debenture, note or other instrument under the terms of which performance by Purchaser according to the terms of this Agreement will be a default, or whereby timely performance by Purchaser according to the terms of this Agreement may be prohibited, prevented or delayed.

(f) Neither Purchaser, nor any of its Affiliates (as herein defined), has dealt with any person, firm or corporation who is or may be entitled to a broker's commission, finder's fee, investment banker's fee or similar payment for arranging the transaction contemplated hereby or introducing the parties to each other. As used herein, an "Affiliate" is any person or entity which controls a party to this Agreement, which that party controls, or which is under common control with that party. "Control" means the power, direct or indirect, to direct or cause the direction of the management and policies of a person or entity through voting securities, contract or otherwise.

4.3 Seller's Representations and Warranties. Seller represents and warrants to Purchaser that:

CORPORATE

(a) Seller is a corporation duly organized, existing and in good standing, under the laws of the State of Delaware. Seller has all necessary corporate power and authority to conduct the Business as the Business is now being conducted.

(b) Seller has qualified as a foreign corporation, and is in good standing, under the laws of all jurisdictions where the nature of the Business or the nature or location of the Purchased Assets requires such qualification.

(c) No consent, authorization, order or approval of, or filing or representation with, any governmental authority or other person is required for the execution and delivery of this Agreement and the consummation by Seller of the transaction contemplated by this Agreement other than consents required from customers of Seller.

(d) Seller has full corporate power and authority to enter into and perform this Agreement. This Agreement has been duly executed and delivered by duly authorized officers of Seller.

(e) Neither the execution and delivery of this Agreement by Seller, nor the consummation by Seller of the transaction herein contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of the Certificate of Incorporation or By-laws of Seller, or of any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any court or any governmental authority or of any arbitration award.

FINANCIAL

(f) There are no unreleased financing statements with respect to the Purchased Assets, and Seller has good title to, and the corporate power to sell, the Purchased Assets, free and clear of any liens, claims, encumbrances and security interests, except for: (i) liens for taxes not yet delinquent; (ii) statutory liens of landlords, liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due; and (iii) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security.

(g) Seller does not have an interest, directly or indirectly, (i) in any business, corporate or otherwise, which is in competition with the Business or is a party to business arrangements with the Business or (ii) in any property which is the subject of business arrangements with the Business.

#### CONTRACTS

(h) Exhibits A and D contain a complete and accurate list of all Sales Orders and all Copper Futures in effect on the date thereof (collectively the "Orders"). True and complete copies of the Orders have been provided to Purchaser. All Sales Orders and Copper Futures are binding on Seller and, to the best of Seller's knowledge, the other parties thereto. Seller is not in default under any of the Orders and, to the best of Seller's knowledge, none of the other parties to any of the Orders is in default thereunder. No event or condition exists which, with the lapse of time, the giving of notice, or the occurrence of some other event or condition, would result in a default under any of the Orders. Seller has not received notice, and has no knowledge, that any of the Sales Orders will be cancelled or modified by the applicable customer. Based upon Seller's 1988 standard costs as in effect on the date hereof, if Seller were to complete the Sales Orders in accordance with Seller's past practices, none of the Sales Orders would be completed at a negative Variable Contribution based upon Seller's 1988 standard costs.

(i) Seller is not a party to, or bound by, any material unexpired, undischarged or unsatisfied written or oral contract, agreement, indenture, mortgage, debenture, note or other instrument under the terms of which performance by Seller according to the terms of this Agreement will be a default or an event of acceleration, or whereby timely performance by Seller according to the terms of this Agreement may be prohibited, prevented or delayed.

#### LITIGATION AND CLAIMS

(j) Except as set forth on Exhibit F annexed hereto, there is no litigation or proceeding, in law or in equity, and there are no proceedings or governmental investigations before any commission or other administrative authority, pending or threatened, against Seller with respect to or affecting the consummation of the transactions herein contemplated, or the use of the Purchased Assets (whether by Purchaser or Seller after the Closing or by Seller prior thereto).

(k) Seller has not made any oral or written warranties with respect to quality or absence of defects of its products or services which it has sold or performed in connection with the Business which are in force as of the date hereof except as described in Exhibit G annexed hereto. Except as described in Exhibit F, there are no material claims pending or anticipated or threatened against Seller with respect to the quality of or absence of defects in the products or services of the Business.

(l) To the best of Seller's knowledge, except as set forth in Exhibit F, Seller is not in violation of, or delinquent in respect to, any decree, order or arbitration award or law, statute, or regulation of, or agreement with, or any license or permit from, any federal, state or local governmental authority to which the properties, assets, personnel or business activities of the Business are subject, including, without limitation, laws, statutes and regulations relating to occupational health and safety, equal employment opportunities, fair employment practices, and sex, race, religious and age discrimination or the environment (including, without limitation, federal, state and local laws, statutes, rules and regulations and the common law relating to environmental matters and contamination of any type whatsoever).

#### OTHER PURCHASED ASSETS

(m) Every material trademark or application therefor, service mark or application therefor, trade name or application therefor, copyright or application therefor, and patent or application therefor, used by Seller and included in the Intangibles is listed in Exhibit H annexed hereto. All of the foregoing and all of the remaining Intangibles, are owned by or licensed to Seller (as designated in Exhibit H) and Seller's rights therein are included in the Purchased Assets. To the best of Seller's knowledge, none of the Intangibles infringes or has infringed any right owned by any third person (or any governmental application for such right). To the best of Seller's knowledge, none of the products or services sold, or processes used, or business practices followed by Seller in the Business infringes or has infringed any right owned by any third person, or constitutes unfair competition. Seller has not disclosed any of the Intangibles which constitute unpatented know-how or technology except to those of Seller's employees who have a need to know such information and have executed secrecy agreements in favor of Seller with respect thereto.

#### GENERAL

(n) Seller has not taken any actions which were calculated to dissuade any present employees, representatives or agents of Seller from becoming associated with Purchaser.

(o) The representations and warranties of Seller in this Agreement do not omit to state a material fact necessary in order to make the representations, warranties or statements contained herein not misleading.

(p) The copies of all documents furnished by Seller to Purchaser pursuant to the terms of this Agreement are complete and accurate.

(q) Seller has not dealt with any person, firm or corporation who is or may be entitled to a broker's commission, finder's fee, investment banker's fee or similar payment for arranging the transaction contemplated hereby or introducing the parties to each other.

(r) Seller has taken any and all actions necessary to advise employees and agents of Seller and its Affiliates that any of the trade secrets, methods, formulas, business and/or marketing plans, processes or any other proprietary information included in the Purchased Assets which, at the time concerned, are not a matter of public knowledge (the "Confidential Information") is an asset purchased by Purchaser.

4.4 Disclaimer of Certain Warranties. Seller makes no warranty to Purchaser as to the condition of the Machinery on the Closing Date and Purchaser expressly agrees that the Machinery is being acquired "as is" as of the Closing Date.

## ARTICLE V

### Closing

5.1 Form of Documents. At the Closing, the parties shall deliver the documents, and shall perform the acts, which are set forth in this Article V. All documents which Seller shall deliver shall be in form and substance reasonably satisfactory to Purchaser. All documents which Purchaser shall deliver shall be in form and substance reasonably satisfactory to Seller.

5.2 Purchaser's Deliveries. Purchaser shall execute and/or deliver to Seller all of the following:

(a) the initial payment of the purchase price of the Sales Orders, Intangibles and Copper Futures pursuant to Section 3.1;

(b) a certified copy of Purchaser's Certificate of Incorporation and By-laws;

(c) an incumbency and specimen signature certificate with respect to the officers of Purchaser executing this Agreement, and any other document delivered hereunder, on behalf of Purchaser;

(d) a certified copy of resolutions of Purchaser's board of directors, authorizing the execution, delivery and performance of this Agreement;

(e) the assumption agreement, pursuant to which Purchaser assumes the Assumed Liabilities;

(f) the written opinion of Purchaser's counsel, dated as of the Closing Date, in a form reasonably acceptable to Seller's counsel; and

(g) without limitation by specific enumeration of the foregoing, all other documents reasonably required to consummate the transaction herein contemplated.

5.3 Seller's Deliveries. Seller shall execute (where applicable in recordable form) and/or deliver to Purchaser all of the following:



(a) a certified copy of Seller's Certificate of Incorporation and By-laws;

(b) certificates of good standing of Seller by the Secretary of State of Delaware and Rhode Island;

(c) an incumbency and specimen signature certificate with respect to the officers of Seller executing this Agreement, and any other document delivered hereunder, on behalf of Seller;

(d) a certified copy of resolutions of Seller's board of directors, authorizing the execution, delivery and performance of this Agreement;

(e) an assignment to Purchaser, executed by Seller, of the Orders and the Intangibles. If necessary in the opinion of Purchaser's counsel, Seller shall also execute and deliver (in recordable form where required) separate assignments of any of the Purchased Assets, and where applicable, in the form required by the applicable governmental agencies, insurance companies, customers, lessors, and other parties with whom the assignments must be filed);

(f) UCC-1, UCC-2, Federal and State tax lien, bankruptcy and seven (7) year judgment searches with respect to Seller, for the states of Rhode Island and Delaware and the counties thereof in which the Business is conducted, prepared by search companies reasonably satisfactory to Purchaser, and dated not earlier than ten (10) days prior to the Closing Date;

(g) a notice of this transaction, to be given to employees of the Business, in the form of Exhibit I annexed hereto;

(h) the written opinion of Seller's counsel, dated as of the Closing Date, in a form reasonably acceptable to Purchaser's counsel; and

(i) without limitation by specific enumeration of the foregoing, all other documents reasonably required to consummate the transaction herein contemplated.

## ARTICLE VI

### Post-Closing Agreements

6.1 Post-Closing Agreements. From and after the Closing, the parties shall have the respective rights and obligations which are set forth in the remainder of this Article VI.

6.2 Inspection of Records. Seller and Purchaser shall each make their respective books and records available for inspection by the other party, or by its duly accredited representatives, for reasonable business purposes at all reasonable times during normal business hours, for a seven (7) year period after the Closing Date, with respect to all transactions occurring prior to and relating to the Closing, the historical financial condition, results of operations and changes in financial position of Seller, or the obligations of Seller which are assumed by Purchaser. As used in this paragraph, the right of inspection includes the right to make extracts or copies. The representatives of a party inspecting the records of the other party shall be reasonably satisfactory to the other party.

6.3 Confidentiality. Seller, its employees and agents and its Affiliates shall not communicate or divulge to, or use for the benefit of, any person, firm or corporation other than Purchaser, its agents and representatives, the Confidential Information.

6.4 Use of Trademarks. Seller shall cease to use and shall not license or permit any third party to use, any name or trademark or corporate name which is similar or deceptively similar to

any of the names or trademarks or corporate names which are included among the Purchased Assets; provided, however, that Seller shall have the right to use such names or trademarks or corporate names included among the Purchased Assets, for a period not to exceed six (6) months from the Closing Date, in connection with the completion of the Retained Orders.

6.5 Hiring Away Employees. Purchaser shall not be obligated to offer employment to any employee of the Business, but Purchaser shall have the right to review Seller's employment records of salaried employees of the Business as of the Closing Date. Seller shall not take any actions which are calculated to persuade any salaried, technical or professional employees, representatives or agents of Purchaser to terminate their association with Purchaser and shall provide such employees who are offered and accept employment with Purchaser with not less than the severance compensation provided other employees of similar rank and classification of Seller entitled to receive severance compensation in accordance with Seller's standard policy of providing such severance compensation.

6.6 Back-Up. Seller shall, at Purchaser's request, furnish complete detailed back-up material with respect to the Purchased Assets and the Assumed Liabilities.

6.7 Covenant Not To Compete. Until the fifth (5th) anniversary of the Closing Date, Seller and its Affiliates shall not, in any state in the United States, engage or participate, as an owner, partner, shareholder of a privately held corporation or

shareholder to the extent of 5% or more of the outstanding shares of a publicly held corporation, consultant or (without limitation by the specific enumeration of the foregoing) otherwise, either directly or indirectly, in any business which is competitively similar to the Business as of the Closing Date; provided, however, that this covenant shall not be deemed to have been violated if (i) Seller or any of Seller's Affiliates are acquired or come under the control of any person who is directly or indirectly engaged in any business which is competitively similar to the Business as of the Closing Date, or (ii) Seller or Seller's Affiliates shall hereafter acquire a business or entity which is engaged in a business which is competitively similar to the Business, provided that the assets of the business segment which is competitively similar to the Business do not exceed ten percent (10%) of the total assets of the entity so acquired.

6.8 Further Assurances. The parties shall execute such further documents, and perform such further acts, as may be necessary to transfer and convey the Purchased Assets to Purchaser, on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the transaction herein provided.

6.9 Injunctive Relief. Seller specifically recognizes that any breach of either of Sections 6.3 or 6.4 will cause irreparable injury to Purchaser and that actual damages may be difficult to ascertain, and in any event, may be inadequate. Accordingly (and without limiting the availability of legal or equitable,

involved and stating whether any consequential damages are claimed to have been suffered. Seller shall have ten (10) days after receipt of such notice to inspect the allegedly defective product, and to notify Purchaser of Seller's desire to settle privately with such customer or to obtain a replacement product elsewhere, and upon such notification from Seller to Purchaser, Purchaser shall have no further liability under this Section 6.10. If Seller does not so notify Purchaser, and if such products are defective or fail to conform to the customer's order, Purchaser shall, at its option, repair or replace the defective or nonconforming products in accordance with Seller's published terms of sale applicable at the time of shipment. Purchaser will repair, rather than replace, such products whenever it is economically and technically practical to do so. In the event of any such repair Seller shall promptly reimburse Purchaser for Purchaser's direct costs therefor, an allocable share of manufacturing and general and administrative overhead, and shipping costs from and to the customer. In the case of replacement, Seller shall reimburse Purchaser for an amount equal to Purchaser's direct manufacturing cost for the replaced item, including an allocable share of manufacturing and general and administrative overhead in connection therewith, and for shipping costs to and from the customer. In the case of products not repaired pursuant to the foregoing, Purchaser shall pay Seller the scrap or other value of defective footage or nonconforming footage. Seller shall reimburse Purchaser for its reasonable

out-of-pocket costs (including freight out) of handling and disposing of such defective or nonconforming footage unsuitable for sale to other customers. Purchaser shall, at Seller's request, provide Seller with all reasonable information and documentation in Purchaser's possession that would be helpful to Seller in filing damage claims with any shipper of such products. In no event shall Purchaser be required to grant any priority to the performance of Purchaser's obligations under this Section 6.10 over the performance of Purchaser's regular production, but Purchaser shall perform its obligations under this Section 6.10 in the ordinary course of business.

## ARTICLE VII

### Indemnification

7.1 General. From and after the Closing, the parties shall indemnify each other as provided in this Article VII. No specifically enumerated indemnification obligation with respect to a particular subject matter as set forth below shall limit or affect the applicability of a more general indemnification obligation as set forth below with respect to the same subject matter.

7.2 Seller's Indemnification Covenants. Seller shall indemnify, save and keep Purchaser and its successors and assigns, forever harmless against and from all liability, demands, claims, actions or causes of action, assessments, losses, fines, penalties, costs, damages and expenses, including,

without limitation, those asserted by any federal, state or local governmental entity, third party, or former or present employee, including reasonable attorneys' and expert witness fees, sustained or incurred by Purchaser, its successors and assigns, as a result of or arising out of or by virtue of:

(a) any inaccuracy in a representation or breach of warranty made by Seller to Purchaser herein or in any closing document delivered to Purchaser in connection herewith; provided, however, that no claim for indemnification shall be made under this Clause (a) hereof unless the aggregate of all such claims made under this Clause (a) exceeds FIFTY THOUSAND and NO/100 DOLLARS (\$50,000.00) and such claims shall be recognized only to the extent that they exceed FIFTY THOUSAND and NO/100 DOLLARS (\$50,000.00) in the aggregate;

(b) the failure of Seller to comply with, or the breach by Seller of, any of the covenants of this Agreement to be performed by Seller (including, without limitation, this Article VII);

(c) the failure of Seller to discharge when due any obligation of Seller not expressly assumed hereunder by Purchaser, or any claim against Purchaser with respect to any such obligation or alleged obligation;

(d) any claims that arose or arise, in connection with the Business and/or the Purchased Assets, as a result of Seller's ownership of the Purchased Assets and conduct of the Business on or prior to the Closing Date; or

(e) any liability resulting from any failure to comply with any law applicable to bulk sales in connection with the sale of the Purchased Assets pursuant to this Agreement.

7.3 Purchaser's Indemnification Covenants. Purchaser shall indemnify, save and keep Seller, its successors and assigns, forever harmless against and from all liability, demands, claims, actions or causes of action, assessments, losses, fines, penalties, costs, damages and expenses, including reasonable attorneys' and expert witness fees, sustained or incurred by Seller,

their successors and assigns, as a result of or arising out of or by virtue of:

(a) any inaccuracy in a representation or breach of warranty made by Purchaser to Seller herein or in any closing document delivered to Seller in connection herewith;

(b) the failure of Purchaser to comply with, or the breach by Purchaser of, any of the covenants of this Agreement to be performed by Purchaser (including without limitation this Article VII); or

(c) any claims that arise, in connection with the Business and/or the Purchased Assets, as a result of Purchaser's ownership of the Purchased Assets and conduct of the Business after the Closing Date, provided that such claims do not result from:

(i) any inaccuracy in a representation or breach of warranty made by Seller to Purchaser herein or in any closing document delivered to Purchaser in connection herewith;

(ii) the failure of Seller to comply with, or the breach by Seller of, any of the covenants of this Agreement to be performed by it (including, without limitation this Article VII); or

(iii) any other matter which first arose prior to the Closing Date.

7.4 Limitation on Damages. In no event shall the aggregate amount payable by Seller to Purchaser by reason of a misrepresentation or breach of warranty by Seller exceed the aggregate amount paid by Purchaser to Seller pursuant to Article III.

## ARTICLE VIII

### Miscellaneous

8.1 Publicity. Press releases concerning this transaction shall be made only with the prior agreement of Seller and Purchaser. No such press releases or other publicity shall state the amount of the Purchase Price.



8.2 Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when delivered in person, or two (2) business days after being deposited in the United States mail, postage prepaid, registered or certified mail, addressed as follows:

If to Seller  
addressed to:  
Wickes Manufacturing & Automotive Aftermarket  
Distribution Group  
26261 Evergreen Road  
Southfield, Michigan 48037  
Attention: Edward B. Hirschberg, Vice  
President, Business Development

with a copy to:  
Wickes Manufacturing & Automotive Aftermarket  
Distribution Group  
26261 Evergreen Road  
Southfield, Michigan 48037  
Attention: Charles E. Lewis, Vice  
President and General Counsel

If to Purchaser  
addressed to:  
Cablec Corporation  
17 Squadron Blvd.  
New City, New York 10956  
Attention: Harry C. Schell, President and  
Chief Executive Officer

with a copy to:  
Alzheimer & Gray  
10 South Wacker Drive  
Suite 4000  
Chicago, Illinois 60606  
Attention: David W. Schoenberg, Esq.

and/or to such other respective addresses and/or addressees as may be designated by notice given in accordance with the provisions of this Section 8.2.

8.3 Expenses; Transfer Taxes. Each party hereto shall bear all fees and expenses incurred by such party in connection with,

relating to or arising out of the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including, without limitation, attorneys', accountants' and other professional fees and expenses. Purchaser shall pay all sales, use and excise and transfer taxes which may be payable in connection with the transactions contemplated hereby.

8.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. Each exhibit shall be considered incorporated into this Agreement. Any amendments, or alternative or supplementary provisions to this Agreement must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

8.5 Non-Waiver. The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said party of any breach of any of the terms, covenants or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. A breach of any

representation, warranty or covenant shall not be affected by the fact that a more general or more specific representation, warranty or covenant was not also breached.

8.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

8.7 Severability. The invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portion of the applicable provision.

8.8 Applicable Law. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of New York applicable to contracts made in that State.

8.9 Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto, and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.10 Assignability. This Agreement shall not be assignable by any party without the prior written consent of the other party.

8.11 Amendments. This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

8.12 Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

SELLER:

WICKES MANUFACTURING COMPANY

By: Charles E. Lewis  
Charles E. Lewis  
Vice President

PURCHASER:

CABLEC CORPORATION

By: Charles L. Killeen  
Charles L. Killeen  
Vice President

BICC Cables Corporation  
BICC Cables Canada Inc.  
Pyrotenax USA Inc.

and

GK Technologies, Incorporated

**ASSETS SALE AND  
PURCHASE AGREEMENT**

relating to  
the sale and purchase of the energy cable Operations of  
BICC Cables Corporation, Pyrotenax USA Inc. and BICC Cables Canada Inc.

Dated April 6, 1999

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This Agreement is made on April 6, 1999 among

- (1) **BICC Cables Corporation**  
a company incorporated in Delaware, the United States  
whose principal place of business is at One Crosfield Avenue, West Nyack, NY;
- (2) **Pyrotenax USA Inc.** (together with BICC Cables Corporation, the **US Vendor**), a  
company incorporated in Delaware, the United States.
- (3) **BICC Cables Canada Inc. (the Canadian Vendor)**  
a company incorporated under the federal laws of Canada  
whose principal place of business is at 265 Yorkland Boulevard, Suite 500,  
North York, Ontario M2J 1S5;
- (4) **BICC plc (the Vendors' Guarantor)**  
a company incorporated in England and Wales  
whose registered office is at Devonshire House, Mayfair Place, London W1X 5FH;
- (5) **GK Technologies, Incorporated (the US Purchaser)**  
a company incorporated in New Jersey, the United States  
whose principal place of business is at 4 Tesseneer Drive, Highland Heights, KY  
41076;
- (6) **GK Technologies, Incorporated (the Canadian Purchaser)**  
a company incorporated in New Jersey, the United States  
whose principal place of business is at 4 Tesseneer Drive, Highland Heights, KY  
41076; and
- (7) **General Cable Corporation (the Purchasers' Guarantor)**  
a company incorporated in Delaware, the United States  
whose principal place of business is at 4 Tesseneer Drive, Highland Heights,  
KY 41076.

#### **Background**

The Vendors' Guarantor engages in the energy cables business worldwide, both directly and indirectly, through various subsidiaries and joint ventures, including through the US Vendor and the Canadian Vendor. The Purchasers' Guarantor and the Vendors' Guarantor intend to enter into transactions for the sale by the Vendors' Guarantor of its worldwide energy cables business. The parties intend that the portion of the energy cables business conducted worldwide other than in North America be transferred to Affiliates of the Purchasers' Guarantor under the Non-North American Agreements and that the portion of the energy cables business conducted in North America be transferred to US Purchaser and Canadian Purchaser pursuant to the terms and conditions of this Agreement.

Now, therefore, intending to be legally bound hereby, the parties hereto agree as follows:

## **1 Interpretation**

In this Agreement, including its Schedules, the headings shall not affect its interpretation and, unless the context otherwise requires, the provisions in this Section 1 apply:

### **1.1 Definitions**

**Accounts Receivable** means (a) any right to payment for goods sold, leased or licensed or for services rendered, whether or not it has been earned by performance, whether billed or unbilled, and whether or not it is evidenced by any Contract; (b) any note receivable; or (c) any other receivable or right to payment of any nature, in each case arising in the ordinary course of the Operations, but excluding any Excluded Assets;

**Acquired Assets** means the US Assets and the Canadian Assets;

**Affiliate** means, relative to any person, any other person which, directly or indirectly, controls or is controlled by or under common control with such person. For the purposes of this definition, "control" (including correlative terms such as "controlling", "controlled by" and "under common control with") means, relative to any person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting stock, by agreement or otherwise; provided, however, that beneficial ownership of 20% or more of the voting stock of a person shall be deemed to be control;

**Agreed Upon Net Asset Value** has the meaning given to it in Section 9.3.3;

**Agreement** means this Assets Sale and Purchase Agreement;

**Asbestos Liabilities** has the meaning given to it in Section 2.3.2(f);

**Assumed Liabilities** means, collectively, the US Assumed Liabilities and the Canadian Assumed Liabilities, and **Assumed Liability** means any one of such Assumed Liabilities;

**Balance Sheet Date** means December 31, 1998;

**Bulk Sales Laws** means the Uniform Commercial Code Bulk Transfer provisions of any Jurisdiction (or any similar Laws of any applicable Jurisdiction) relating to bulk sales which are applicable to the sale of the Acquired Assets hereunder;

**Business Day** means a day on which banks are open for business in London and New York City (excluding Saturdays, Sundays and public holidays);

**Canadian Assets** means all right, title, and interest in and to, as the same shall exist on the Closing Date, all of the assets, business, properties and rights of every nature, kind and description of the Canadian Vendor used in or relating to the Canadian Business, wheresoever located and whether or not reflected on the books and records of the Canadian Vendor, including all of its prepayments, deposits and escrows, Accounts Receivable, Inventory, Tangible Property, Real Property, Permits, Software, Contract Rights (other than Contract Rights with respect to the Contracts identified on Schedule 13) Intangible Property and goodwill, and claims, causes of action and other legal rights and remedies related to the foregoing; provided, however, that, any term or provision hereof to the contrary notwithstanding, the Canadian Assets shall not include any of the Excluded Assets;

**Canadian Assumed Liabilities** has the meaning given to it in Section 2.2.4;

**Canadian Business** means the energy cables business conducted by the Canadian Vendor which, together with the US Business, constitutes the Operations, summary details of which are contained or referred to in Schedule 1;

**Canadian Excluded Liabilities** has the meaning given to it in Section 2.2.6;

**Cash Equivalents** means "cash equivalents" as defined by the accounting policies and principles set out in Schedule 7;

**Closing** means the closing of the sale and purchase of the Acquired Assets and the assumption of the Assumed Liabilities pursuant to this Agreement;

**Closing Date** means the date on which the Closing takes place;

**Collective Bargaining Agreements** means the legally recognized agreements, including benefit agreements, letters of understanding and identified past practices between US Vendor or Canadian Vendor and any labor union or organization lawfully recognized to represent the employees of any facility;

**Code** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;

**Combined Accounts** means the accounts of the US Vendor and the Canadian Vendor relating to the Operations for the twelve-month financial period ended on the Balance Sheet Date, extracted from the aggregated accounts of the Global Operations for such financial period audited by Arthur Andersen, copies of which are included in the Disclosure Letter;

**Confidential Information** has the meaning given to it in Section 19.3.3;

**Continuing Employees** means those employees of the US Vendor or the Canadian Vendor who will become employees of Purchaser on or after Closing;

**Contract Right** means any right, power or remedy of any nature under any Contract, including rights to receive property or services or otherwise derive benefits from the payment, satisfaction or performance of another person's obligations, rights to demand that another person accept property or services or take any other actions, and rights to pursue or exercise remedies or options;

**Contracts** means any written or oral contract, agreement, instrument, order, arrangement, commitment or understanding of any nature, including sales orders, purchase orders, leases, subleases, data processing agreements, maintenance agreements, license agreements, sublicense agreements, loan agreements, promissory notes, instruments, security agreements, pledge agreements, deeds, mortgages, guaranties, indemnities, warranties, employment agreements, consulting agreements, sales representative agreements, joint venture agreements, buy-sell agreements, options or warrants including quotations or tenders for contracts which remain open for acceptance;

**Data Room** means collectively the data room containing documents relating to the Vendors and its Affiliates at the offices of Linklaters & Paines, 1345 Avenue of the Americas, New York, New York, at the US Vendor's Lawyers and at Borden & Elliot, Scotia Plaza, Toronto, Ontario;

**Disclosure Letter** means the letter which is arranged in Sections corresponding to the Sections of this Agreement of even date with this Agreement from the Vendors to the Purchasers disclosing (i) information, in reasonable detail, which constitutes exceptions to the Warranties and (ii) details of other matters referred to in this Agreement;

**dollar or \$** means United States dollar;

**Employee Benefit Arrangements** means (i) any "employee welfare benefit plan" or "employee pension benefit plan" (as those terms are respectively defined in sections 3(1) and 3(2) of ERISA), (ii) any pension, retirement or supplemental pension plan or deferred compensation plan, incentive compensation plan, savings plan, stock plan, retiree medical benefit, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to legislation, contract, arrangement, custom or informal understanding, which does not constitute an employee benefit plan (as defined in section 3(3) of ERISA), or (iii) any employment agreement;

**Employees** means all persons employed by US Vendor or the Canadian Vendor in the Operations, including, those persons on short or long-term disability, leave of absence or legally required leave;

**Employment Letter** means the letter from the Purchasers to the Vendors supplied on the date hereof, as it may be updated in accordance with the terms of Schedule 11, indicating which Employees with employment Contracts listed on Section 1.1 of Schedule 12 of the Disclosure Letter will become Continuing Employees (as to whom Purchasers will assume such employment Contracts) and which Employees will not become Continuing Employees (which non-Continuing Employees may include persons who may receive consulting agreements from the Purchasers for a fixed period of time);

**Encumbrance** means any claim, charge, mortgage, easement, leasehold, assessment, restriction, reservation, security, lien, security interest, pledge, option, equity, power of sale, conditional sale, prior assignment, hypothecation or encumbrance, burden, charge, adverse claim or third party right of any kind or nature whatsoever;

**Excluded Assets** means the assets described or referred to in Schedule 17 which are excluded from the sale and purchase of the Acquired Assets set forth in this Agreement;

**Excluded Liabilities** has the meaning given to it in Section 2.2.6, and includes all Asbestos Liabilities, Marion Liabilities and Trenton Liabilities;

**General Services and Supply Agreement** means the service and supply agreement to be entered into with effect from or following Closing, between or among one or more of the persons included in the Vendors' Group and one or more persons included in the Purchasers' Group;

**Global Operations** means the Operations (as defined herein) and the "Operations" (as defined in the Non-North American Sale and Purchase Agreement), taken as a whole;

**Governmental Authority** means any international, national, federal, state, provincial, local, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any court or tribunal, in each case whether of the United States or Canada or other jurisdiction;

**holding company** means a company which controls, whether pursuant to an agreement with other shareholders or otherwise, a majority of the voting rights of another company;

**Income Tax Act (Canada)** means the Income Tax Act (Canada), R.S.C. 1985, c.1 (5th Supp.), as amended, and the regulations prescribed thereunder;

**Improvements** mean all buildings and all other structures, parking areas, fixtures or other improvements on, over or under the Land;

**including** means including without limitation;

**Intangible Property** means any name, corporate name, fictitious name, registered or unregistered trademark, trademark application, service mark, service mark application, trade name, brand name, product name, slogan, trade secret, Know-how, patent, patent application, copyright, copyright application, design, logo, formula, invention, product right, technology, or other intangible asset of any nature, whether in use, under development or design, or inactive;

**Inventory** means all raw materials, supplies, work in progress, packaging materials, finished goods, parts and any other inventory of any nature whatsoever;

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**Judgment** means any order, writ, injunction, citation, award, decree or other judgment of any nature of any foreign, federal, state, provincial or local court, governmental body, administrative agency, regulatory authority or arbitration tribunal;

**Jurisdictions** means the United States and Canada;

**Know-how** means confidential and proprietary industrial and commercial information and techniques in any form (including paper, electronically stored data, magnetic media, film and microfilm) including drawings, formula, test results, reports, project reports and testing procedures, shop practices, instruction and training manuals, tables of operating conditions, market forecasts, specifications, quotations, tables, lists and particulars of customers and suppliers, marketing methods and procedures, show-how and advertising copy;

**Land** means all that certain Real Property of the US Vendor or Canadian Vendor (other than Excluded Assets) upon which the Improvements are located, as more particularly described in Schedule 1 attached hereto and made a part hereof, together with all property rights, easements, tenements, hereditaments, rights-of-way, development rights, air rights, entitlements, unused densities, privileges and appurtenances thereto; all leases, rents and profits derived therefrom, all right, title and interest of the US Vendor and/or the Canadian Vendor in and to any land lying in the bed of any street, road, highway or avenue, open or proposed, public or private, in front of or adjoining all or any part of the Land to the center line thereof, all right, title and interest of the US Vendor and/or the Canadian Vendor in and to any unpaid award or payment included in the Acquired Assets which may now or hereafter be payable in respect of any taking, by condemnation of any portion of the Land or Improvements by any Governmental Authority; and all right, title and interest of the US Vendor and/or the Canadian Vendor in and to any unpaid award included in the Acquired Assets for damage or destruction to the Land or any part thereof by reason of any fire or other casualty, or resulting from any change of grade of any street, road, highway or avenue adjacent to the Real Property of the US Vendor of the Canadian Vendor; all strips and gores adjoining, and adjacent to the Land; and all oil, gas and mineral rights;

**Law** means any provision of any foreign, federal, state, provincial or local law, statute, ordinance, charter, constitution, treaty, code, rule, Canadian guideline, policy or protocol, or regulation;

**Leased Property** means the leased Real Property brief details of which are set out in Schedule 1;

**Liabilities** means all liabilities, indebtedness, claims, demands, damages, deficiencies, Judgments, actions, causes of action, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety;

**Loss or Losses** means all losses, Liabilities, costs (including costs of investigation, interest costs, fines, penalties, and legal fees and costs), charges, expenses, actions, proceedings, investigations, claims and demands;

**Management Accounts** means the unaudited management accounts relating to the Operations for the financial period ending on February 28, 1999;

**Marion Liabilities** has the meaning given to it in Section 2.3.2(g);

**Material Contracts** has the meaning given to it in Section 5.3.1 of Schedule 8;

**Net Asset Statement** has the meaning given to it in Section 9.1;

**Net Asset Value** means the aggregate of the value of the Acquired Assets less the aggregate of all Assumed Liabilities as shown in the Net Asset Statement;

**Non-North American Agreements** means the Non-North American Sale and Purchase Agreement, the Non-North American Subsidiary Agreements and the Non-North American Tax Deed of Covenant;

**Non-North American Sale and Purchase Agreement** means the Sale and Purchase Agreement entered into on the date hereof between, among others, the Vendors' Guarantor and the Purchasers' Guarantor in connection with the sale of the worldwide energy cables operations of the Vendors' Guarantor other than the Operations;

**Non-North American Subsidiary Agreements** means the Subsidiary Agreements as defined in the Non-North American Sale and Purchase Agreement;

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**Non-North American Tax Deed of Covenant** means Tax Deed of Covenant as defined in the Non-North American Sale and Purchase Agreement;

**Operations** means, collectively, the US Business and the Canadian Business, including without limitation, those operations briefly described on Schedule 1 attached hereto and made a part hereof;

**Payment Account Details** means, in relation to any payment to be made under or pursuant to this Agreement, the name, account number, account location and other details specified by the payee and necessary to effect payment (whether by wire or other electronic means of transfer) to the payee;

**Permit** means any license, permit, approval, waiver, order, authorization, consent, certificate of occupancy, order, warrant, confirmation, permission, certificate, right or privilege of any nature, granted, issued, approved or allowed by any Governmental Authority;

**person** means any natural person, sole proprietorship, joint venture, corporation, firm, association, partnership, limited liability partnership, limited liability company, cooperative, estate, government, trust, governmental body, administrative agency, regulatory authority or any other entity, whether acting in an individual, fiduciary or other capacity;

**£** means British pounds sterling;

**Purchase Price** has the meaning given in Section 3.1;

**Purchasers** means the US Purchaser and the Canadian Purchaser and **Purchaser** means any of such Purchasers;

**Purchasers' Group** means the Purchasers, their Subsidiaries and their holding company, as such group may from time to time exist;

**Real Property** means any real estate, Land, building, condominium, town house, structure or other real property of any nature, all shares of stock or other ownership interests in cooperative or condominium associations or other forms of ownership interest through which interests in real estate may be held, all leasehold estates with respect to any of the foregoing, and all appurtenant and

ancillary rights thereto, including easements, covenants, water rights, sewer rights and utility rights, including, without limitation, the Improvements and the Leased Properties, or any one or more of them;

**Relevant Purchaser** means, when used to reflect any matter relating to the purchase of the Canadian Assets, the Canadian Purchaser, and when used to reflect any matter relating to the purchase of the US Assets, the US Purchaser;

**Relevant Vendor** means, when used to reflect any matter relating to the sale of the Canadian Assets, the Canadian Vendor, and when used to reflect any matter relating to the sale of US Assets, the US Vendor;

**Reporting Accountants** means Ernst & Young LLP, or another nationally recognized firm of independent public accountants that are independent of the Vendors' Group and the Purchasers' Group and are selected by agreement of the US Vendor and the US Purchaser;

**Restrictive Covenants** has the meaning given in Section 19.23;

**Schedule 4 Contracts** has the meaning given to it in Section 2.3.2(e);

**Senior Employee** means any Employee whose annual cash compensation exceeds \$90,000 or its local equivalent;

**Senior Executives** means George N. Benjamin, III, Hans P. Berndorff, George M. Priggins, Bill Meechan, JoAnn Prior, Don Aken, Jack Lavin and Tom Ragon;

**Software** means any computer program, operating system, applications system, firmware or software of any nature, whether operational, under development or inactive, including all object code, source code, technical manuals, user manuals and other documentation therefor, whether in machine-readable form, programming language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature;

**Subsidiary** means, relative to any person, (x) any corporation, association or other business entity more than 50% of the outstanding shares of voting stock of which is owned directly or indirectly by such person and (y) any partnership in which such person is a general partner;

**Tangible Property** means any furniture, fixtures, leasehold improvements, vehicles, equipment (including, without limitation, office, computer and other equipment), machinery, tools, spare parts, forms, supplies and other tangible personal property of any nature, whether such is owned or leased;

**Tax** means any federal, state, provincial, local, or foreign income, gross receipts, license, payroll, employment, health, social services, education, excise, severance, stamp, occupation, premium, windfall profits, environmental (including Taxes under Code Section 59A) customs, duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, goods and services, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not;

**Tax Deed of Covenant** means the deed of covenant against liability for Tax to be entered into by the US Vendor and the Canadian Vendor indemnifying the US Purchaser and the Canadian Purchaser, as applicable;

**Tax Return** means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof;

**Tax Statute of Limitations Date** means the close of business on the 90th day after the expiration of the applicable statute of limitations in respect of the relevant Tax, including any extensions thereof (or if such date is not a Business Day, the next Business Day);

**Third Party Consents** means all consents, permits, approvals, authorizations or waivers required from third parties, other than Governmental Authorities, for or necessary as a result of the conveyance, transfer, assignment, novation or subletting of any of the Acquired Assets to any Purchaser, including the Third Party Consents set forth on Schedule 4, and **Third Party Consent** means any one of the Third Party Consents;

**Trenton Liabilities** has the meaning given to it in Section 2.3.2(h).

**US Assets** means all right, title, and interest in and to, as the same shall exist on the Closing Date, all of the assets, business, properties and rights of every nature, kind and description of the US Vendor used in or relating to the US Business, wheresoever located and whether or not reflected on the books and records of the US Vendor, including without limitation, all of its prepayments, deposits and escrows, Accounts Receivable, Inventory, Tangible Property, Real Property, Permits, Software, Contract Rights (other than Contract Rights with respect to the Contracts identified on Schedule 13), Intangible Property and goodwill, and claims, causes of action and other legal rights and remedies related to the foregoing; provided, however, that any term or provision hereof to the contrary notwithstanding, the US Assets shall not include any of the Excluded Assets;

**US Assumed Liabilities** has the meaning given to it in Section 2.2.1;

**US Business** means the energy cables business conducted by the US Vendor which, together with the Canadian Business, constitutes the Operations;

**US Excluded Liabilities** has the meaning given to it in Section 2.2.3;

**US Vendor's Lawyers** means Mayer, Brown & Platt of 1675 Broadway, New York, New York 10019;

**Vendor Owned Real Property** means the Real Property owned by the US Vendor or the Canadian Vendor that is used in the Operations and is not an Excluded Asset;

**Vendors** means the US Vendor and Canadian Vendor and **Vendor** means any of such Vendors;

**Vendors' Group** means the US Vendor, the Canadian Vendor, the Vendors' Guarantor and each Subsidiary of the Vendors' Guarantor, as such group may from time to time exist; provided, however, that after giving effect to the Closing, Vendors' Group shall cease to include the Group Companies, as defined in the Non-North American Sale and Purchase Agreement;

**Warranties** means the representations and warranties of the Vendors contained in this Agreement (including the Schedules hereto) and the Tax Deed of Covenant and **Warranty** means any one of the Warranties.

## **1.2 Subordinate Legislation**

Any reference to a statutory provision shall include any rules or regulations made from time to time under that provision which are in force at the date of this Agreement.

## **1.3 [Intentionally Omitted]**

## **1.4 Schedules, etc.**

References herein to this Agreement shall include the Schedules and Subschedules to this Agreement and references to Sections are to Sections to this Agreement or Sections to the Schedules and/or Subschedules.

## **1.5 Conflict**

The provisions of this Agreement shall control in the event of any conflict between the provisions in this Agreement and the Non-North American Sale and Purchase Agreement with respect to the matters set forth in this Agreement.

## **1.6 Information**

Any reference herein to books, records or other information means books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

## **1.7 Knowledge**

Any Warranty or statement of the Vendors qualified by the expression "to the best knowledge of" or "so far as a person is aware" or any similar expression with respect to any Vendor shall be deemed to refer to the actual knowledge, as of the date such Warranties are made or deemed to be made, of such Senior Executives after having made due and careful inquiry.

SG  
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## **1.8 Accounting Standards**

Unless otherwise specified, all accounting terms used herein shall be interpreted, and all accounting determinations and computations hereunder shall be made, in accordance with the accounting policies and principles referred to in Section 1 of Schedule 7 (exclusive, however, of Sections 2 and 3 of such Schedule).

## **2 Agreement to Sell the Acquired Assets**

### **2.1 Sale and Purchase of Acquired Assets**

Subject to the terms and conditions of this Agreement and the Tax Deed of Covenant at Closing, the US Vendor shall sell the US Assets to the US Purchaser, and the Canadian Vendor shall sell the Canadian Assets to the Canadian Purchaser, and the US Purchaser shall purchase the US Assets and the Canadian Purchaser shall purchase the Canadian Assets, in each case with the benefit of the Warranties, covenants and indemnities contained in this Agreement, free from all Encumbrances (except as expressly provided in this Agreement or disclosed in the Disclosure Letter).

### **2.2 Assumption of Liabilities**

#### **2.2.1 US Assumed Liabilities**

Subject to Sections 2.2.2 and 2.2.3, the US Purchaser shall assume, duly and punctually pay, satisfy, discharge, perform or fulfill all of the following Liabilities of the US Vendor (collectively, the **US Assumed Liabilities**):

(a) arising under the Permits and Contracts of the US Vendor (other than the Contracts listed on Schedule 17 and the employment Contracts for Employees named in the Employment Letter who will not be Continuing Employees);

(b) expressly assumed by the US Purchaser or any other Relevant Purchaser (other than the Canadian Purchaser) elsewhere under this Agreement; or

(c) any other Liabilities of the US Vendor, but only to the extent that they are taken into account in the calculation of, or provided for in, the Net Asset Statement.

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## 2.2.2 Treatment of Certain pre-Closing US Liabilities

Notwithstanding anything to the contrary contained in Section 2.2.1, unless included (or provided for) in the calculation of Liabilities in the Net Asset Statement, US Purchaser shall not assume or be deemed to have assumed any Liability of the US Vendor described below:

(a) to perform any obligation or pay any Liability of the US Vendor which was required to be performed or paid prior to Closing; including, payment of any salaries, compensation (excluding unused vacation, sick or severance pay, whether or not accrued) rents, Taxes, utility charges and any and all fees and charges due under the Permits and Contracts transferred or assigned to or held in trust for or held for the benefit of the US Purchaser pursuant to this Agreement for periods prior to Closing; or

(b) for or in respect of any product manufactured and/or sold or service performed by the US Vendor prior to Closing, except to the extent (but only to the extent) that such Liability in respect of any product manufactured or service performed has resulted from any US Purchaser's breach of its obligations under Section 12 hereof.

## 2.2.3 US Excluded Liabilities

Notwithstanding anything to the contrary contained herein, US Purchaser does not assume and shall in no event be liable for any Liabilities of the US Vendor to any person, whether fixed or inchoate, known or unknown, liquidated or unliquidated, secured or unsecured, contingent or otherwise, except for those Liabilities specifically assumed by US Purchaser in Section 2.2. All Liabilities of the US Vendor not so assumed (collectively, **US Excluded Liabilities**) shall be and remain solely US Vendor's responsibility;

## 2.2.4 Canadian Assumed Liabilities

Subject to Sections 2.2.5 and 2.2.6, the Canadian Purchaser shall assume, duly and punctually pay, satisfy, discharge, perform or fulfill all of the following Liabilities of the Canadian Vendor (collectively, the **Canadian Assumed Liabilities**):

(a) arising under the Permits and Contracts of the Canadian Vendor (other than the Contracts listed on Schedule 17 and the employment Contracts for Employees named in the Employment Letter who will not be Continuing Employees);

(b) expressly assumed by the Canadian Purchaser elsewhere under this Agreement; or

(c) any other Liabilities of the Canadian Vendor, but only to the extent that they are taken into account in the calculation of, or provided for in, the Net Asset Statement.

#### **2.2.5 Treatment of Certain pre-Closing Canadian Liabilities**

Notwithstanding anything to the contrary contained in Section 2.2.4, unless included (or provided for) in the calculation of Liabilities in the Net Asset Statement, Canadian Purchaser shall not assume or be deemed to have assumed any Liability of the Canadian Vendor described below:

(a) to perform any obligation or pay any Liability of the Canadian Vendor which was required to be performed or paid prior to Closing; including payment of any salaries, compensation (excluding unused vacation, sick or severance pay, whether or not accrued) rents, Taxes, utility charges and any and all fees and charges due under the Permits and Contracts transferred or assigned to or held in trust for or held for the benefit of the Canadian Purchaser pursuant to this Agreement for periods prior to Closing; or

(b) for or in respect of any product manufactured and/or sold or service performed by the Canadian Vendor prior to Closing, except to the extent (but only to the extent) that such Liability in respect of any product manufactured or service performed has resulted from any Canadian Purchaser's breach of its obligations under Section 12 hereof.

#### **2.2.6 Canadian Excluded Liabilities**

Notwithstanding anything to the contrary contained herein, Canadian Purchaser does not assume and shall in no event be liable for any Liabilities of the Canadian Vendor to any person, whether fixed or inchoate, known or unknown, liquidated or unliquidated, secured or unsecured, contingent or otherwise, except for those Liabilities specifically assumed by Canadian Purchaser in Section 2.2. All Liabilities of the Canadian Vendor not so assumed (collectively, **Canadian Excluded**



Liabilities and together with the US Excluded Liabilities, Excluded Liabilities) shall be and remain solely Canadian Vendor's responsibility.

### 2.2.7 Special Provisions relating to Certain Environmental Issues

Notwithstanding any term or condition set forth in Schedule 16 relating to environmental matters:

(a) US Vendor, upon receiving a request for payment, from time to time, from US Purchaser, shall within thirty (30) days thereafter, reimburse Purchaser dollar for dollar up to an aggregate maximum amount of \$500,000 for Purchasers' reasonable expenses (including internal overhead costs) for machine guarding at any of the facilities used in the Operations. US Vendor's obligations under this clause (a) shall constitute Vendors' sole obligation to Purchasers for machine guarding and machine guarding obligations relating to the Operations.

(b) US Vendor, upon receiving a request for payment, from time to time, from US Purchaser, shall within thirty (30) days thereafter, reimburse US Purchaser dollar for dollar up to an aggregate maximum amount of \$500,000, less any amount paid by US Vendor prior to Closing, for installation of a cooling water recirculation system and other equipment or modifications necessary to meet wastewater discharge limits at the Malvern, Arkansas facility. "Other equipment" for this purpose includes a dry cure byproduct filter box; a sump evaporator and an electric byproduct precipitator. US Vendor's obligations under this clause (b) shall constitute Vendors' sole obligation to Purchasers for improvements necessary to meet wastewater discharge limits at the Malvern, Arkansas facility.

(c) US Vendor, upon receiving a request for payment, from time to time, from US Purchaser, shall within thirty (30) days thereafter, reimburse US Purchaser dollar for dollar up to an aggregate maximum amount of \$350,000 for installation of a wastewater recirculation system or other wastewater system modifications necessary to meet wastewater discharge limits at the Wilimantic, Connecticut facility. US Vendor's obligations under this clause (c) shall constitute Vendors' sole obligation to Purchasers for improvements necessary to meet wastewater discharge limits at the Wilimantic, Connecticut facility.

### 2.3 Indemnification

The parties hereto agree as follows:

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2.3.1 Survival; Assertion of Claims, etc.

(a) All representations, warranties and covenants of the parties to this Agreement contained in this Agreement (or the Schedules hereto) shall survive the Closing and continue in effect for the following periods:

(i) The covenants of each party to this Agreement shall continue until the obligations required to be performed or satisfied by the covenants have been performed or satisfied;

(ii) The representations and warranties of the US Vendor and Canadian Vendor shall expire as follows: (x) with respect to the representations and warranties relating to the environment set forth on Schedule 16, five years after the Closing Date; (y) with respect to the representation and warranties relating to Tax matters as set forth in the Tax Deed of Covenant, until the end of the applicable Tax Statute of Limitations Date; and (z) with respect to all other representations and warranties, two years after the Closing Date; and

(iii) The representations and warranties of the Purchasers' Guarantor and the Purchaser shall expire two years after the Closing Date.

(b) Each party to this Agreement must assert any claim for indemnification involving a representation, warranty or covenant against the other party before the expiration of any applicable survival period. Any indemnity claim pursuant to this Section 2.3 shall (if it has not been previously satisfied, settled or withdrawn) be deemed to be withdrawn six months after the relevant time limit set forth above unless legal proceedings in respect of such claim (i) have been commenced and (ii) are being pursued in good faith and with reasonable diligence. Notwithstanding any provision to the contrary contained in this Agreement (other than the preceding sentence), so long as such indemnity claim is asserted timely, such claim will continue to be valid and assertable even though the survival period may subsequently expire before such claim is resolved.

(c) All claims for indemnification pursuant to this Agreement or the Tax Deed of Covenant shall be subject to the limitations, notice requirements, time periods and other terms and conditions of this Section 2.3.



### 2.3.2 Indemnification of Purchasers' Indemnified Group

The US Vendor and the Canadian Vendor shall, jointly and severally, indemnify, defend and hold harmless the US Purchaser, the Canadian Purchaser, the Purchasers' Guarantor and their officers, directors, Affiliates, agents and representatives (collectively, the **Purchasers' Indemnified Group**) from and against any and all Losses (including for purposes of Section 2.3.2(e) only, consequential damages) with respect to the following:

(a) any misrepresentation or breach of Warranty, covenant or agreement of the US Vendor or the Canadian Vendor contained in this Agreement (or the Schedules hereto);

(b) any and all of the Vendors' Excluded Liabilities whether known or unknown on the date hereof or on the Closing Date, and whether or not such Liabilities constitute or arise from a breach of any Warranty made by either Vendor herein, including any such Liability which is deemed to be, or becomes, a Liability of any member of the Purchasers' Indemnified Group by virtue of any applicable Law and which is not otherwise assumed by the Purchasers under this Agreement;

(c) without duplication, any Losses which any member of the Purchasers' Indemnified Group may suffer by reason of any member of the Purchasers' Indemnified Group taking any reasonable action to avoid, resist or defend against any Liability arising in connection with or referred to in Section 2.3.2(a) or Section 2.3.2(b);

(d) subject to the provisions of the Tax Deed of Covenant, any Liability in respect of any Tax which each Relevant Purchaser is indemnified against pursuant to the Tax Deed of Covenant;

(e) the Purchasers' failure to (i) receive any necessary Third Party Consent with respect to any of the Contracts listed on Schedule 4 (the **Schedule 4 Contracts**) or (ii) otherwise provide the Purchasers with the economic benefits of the Schedule 4 Contracts;

(f) the presence or alleged presence of or exposure by any person to any asbestos or asbestos-containing materials in any of the materials or products manufactured, sold, or otherwise distributed by the US Vendor or the Canadian Vendors prior to Closing, including such goods and materials as are in process or in inventory as of the Closing Date (any such Losses described in this clause (f) being, collectively, the **Asbestos Liabilities**);

(g) any Liability in respect of lead detected in the fill material at the Real Property used in the Operations located at Marion, Indiana (the **Marion Liabilities**); provided that Purchaser does not voluntarily undertake a sampling program within the fill area in an attempt to further characterize the nature and extent of the alleged presence of lead or any other constituent or compound at the Marion, Indiana Real Property site, nor does Purchaser voluntarily undertake any soil-intrusive construction activities in said fill area; and provided further that Vendors shall not be liable as result of the foregoing to Purchaser for any claim by Purchaser for property damage to Purchaser's Marion, Indiana Real Property arising out of or with respect to the presence of lead in fill material as described herein. The provisions of Section 7.4 of Schedule 16 to this Agreement shall apply to any Remedial Action (as defined in Schedule 16) required to be performed at the Marion, Indiana Real Property; and

(h) any Liability in respect of solvent detected in the soil or groundwater at the Trenton, Ontario facility (the **Trenton Liabilities**); provided that no Vendor shall be liable as result of the foregoing to any Purchaser for any claim for property damage to the Trenton, Ontario Real Property arising out of or with respect to the solvent in the soil or groundwater as described herein. The provisions of Section 7.4 of Schedule 16 to this Agreement shall apply to any Remedial Action (as defined in Schedule 16) required to be performed at the Trenton, Ontario Real Property.

### **2.3.3 Indemnification of Vendors' Indemnified Group**

The Purchaser and the Canadian Purchaser shall, jointly and severally, indemnify, defend and hold harmless the US Vendor, the Canadian Vendor and the Vendors' Guarantor and their officers, directors, Affiliates, agents and representatives (the **Vendors' Indemnified Group**) from and against any and all Losses with respect to any of the following:

(a) any misrepresentation or breach of any representation, warranty, covenant or agreement of the Purchasers contained in this Agreement (or in any Schedule hereto);

(b) all Assumed Liabilities and any other Liability to the extent such Liability arises as a result of the acts or omission of any Purchaser and/or any other person in the course of carrying on the Operations after Closing, including any such Liability which is or is deemed to be or becomes a Liability of any member of the Vendors' Indemnified Group by virtue of any applicable Law and which is not otherwise an Excluded Liability; and

(c) any Losses which any member of the Vendors' Indemnified Group may suffer by reason of any member of the Vendors' Indemnified Group taking any reasonable action to avoid, resist or defend against any Liability referred to in Section 2.3.3(a) or (b).

#### 2.3.4 Procedure

If any third party shall notify any party to this Agreement (an **Indemnified Party**) with respect to any matter which may give rise to a claim for indemnification against any other party (an **Indemnifying Party**) under this Section 2.3, then the Indemnified Party shall notify the Indemnifying Party thereof promptly; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any liability or obligation hereunder, except to the extent otherwise expressly provided herein or to the extent (but solely to the extent) the Indemnifying Party thereby is damaged. In the event any Indemnifying Party notifies the Indemnified Party within 15 days after the Indemnified Party has given notice of the matter that the Indemnifying Party is assuming the defense thereof, (i) the Indemnifying Party will defend the Indemnified Party against the matter with counsel of its choice reasonably satisfactory to the Indemnified Party, (ii) the Indemnified Party may retain separate co-counsel at its sole cost and expense (except that the Indemnifying Party will be responsible for the fees and expenses of the separate co-counsel to the extent counsel to the Indemnified Party concludes reasonably that it has a conflict of interest), (iii) the Indemnified Party will not consent to the entry of any Judgment or enter into any settlement with respect to the matter without the written consent of the Indemnifying Party (not to be withheld or delayed unreasonably), and (iv) the Indemnifying Party will not consent to the entry of any Judgment with respect to the matter, or enter into any settlement which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all Liability with respect thereto, without the written consent of the Indemnified Party (not to be withheld or delayed unreasonably). If the Indemnifying Party fails to notify the Indemnified Party within 15 days after the Indemnified Party has given notice of the matter that the Indemnifying Party is assuming the defense thereof, the Indemnified Party may defend against the matter in any manner it reasonably may deem appropriate.

#### 2.3.5 Limitations on Indemnification

(a) No person included in the Purchasers' Indemnified Group shall be entitled to any recovery with respect to any claim for indemnification under this Agreement or the Tax Deed of Covenant in respect of any such claim arising from any single circumstance or series of related circumstances if the amount of such claim (excluding interest, costs and expenses) does not

exceed \$20,000; provided that claims relating to a series of related circumstances shall be aggregated for this purpose;

(b) No person included in the Purchasers' Indemnified Group shall be entitled to recover with respect to any claim for indemnification under this Agreement or the Tax Deed of Covenant until the aggregate amount of all such claims exceeds \$750,000 (the **Basket**), in which event the Purchasers' Indemnified Group shall, subject to the other provisions of this Section 2.3.5 be entitled to such indemnification for all amounts, including all amounts forming any part of the Basket; and

(c) The aggregate amount of Liability of the Vendors' Guarantor, US Vendor, Canadian Vendor and any other member of Vendors' Group under this Agreement, the Tax Deed of Covenant and the Non-North American Agreements shall not exceed £160 million (the **Cap**), it being understood that any Liabilities for indemnification arising under Section 2.3.2(e) of this Agreement or Clause 11.4 of the Non-North American Sale and Purchase Agreement shall not be applied against the Cap but shall only be applied against and shall be limited to the Contract Cap (as defined below).

(d) Any term or provision of this Section 2.3.5 to the contrary notwithstanding, (i) no provision of clauses (a), (b) or (c) of this Section 2.3.5 shall apply to (x) any Excluded Liabilities (including Asbestos Liabilities, Marion Liabilities and Trenton Liabilities), (y) any Liability resulting from any breach of any Warranty set forth in Section 8.1.1, 8.4.1 or 9.9.15 of Schedule 8 or (z) any Liability in respect of any matter described to Clause 2.3.1 or 8.10 of the Non-North American Sale and Purchase Agreement, and (ii) the aggregate amount of Liability of the Vendors' Guarantor, US Vendor, Canadian Vendor and any other member of Vendors' Group under Section 2.3.2(e) of this Agreement and Clause 11.4 of the Non-North American Sale and Purchase Agreement shall not exceed £10 million (the **Contract Cap**), it being understood that any amount of Liability under such Section 2.3.2(e) and Clause 11.4 shall be applied against the Contract Cap only and shall not be applied against the Cap.

#### 2.3.6 Insurance Proceeds

Notwithstanding any contrary provision in this Section 2.3, any recovery with respect to a claim asserted hereunder will be reduced by the amount of any insurance proceeds actually recovered by the claimant which directly relates to such claim. The indemnified party agrees to diligently pursue all claims covered by any insurance policy.

### 2.3.7 Taxes

In calculating the Liability of the Vendors or Vendors' Guarantor under this Section 2.3, there shall be taken into account the amount (if any) by which any Tax for which a Relevant Purchaser would otherwise have been accountable or liable to be assessed is actually reduced or extinguished as a result of the matter giving rise to such Liability. The amount of such reduction or extinguishment shall be reasonably determined (in writing with appropriate detail) by the independent certified accounting firm or chartered accountants which prepares or reviews the relevant Tax Returns on behalf of the Relevant Purchaser. A copy of such determination shall be delivered promptly to the Vendors' Guarantor upon its request.

### 2.3.8 Contingent Liabilities

No person included in the Purchasers' Indemnified Group shall be entitled to recover with respect to any claim for indemnification under this Agreement or the Tax Deed of Covenant in respect of any Liability which is contingent unless and until such contingent liability becomes an actual liability and is due and payable; provided that this Section 2.3.8 shall not operate to avoid an indemnity claim made in respect of a contingent liability within the applicable time limits specified in Section 2.3.1 if such indemnity claim is asserted on a timely basis and in accordance with Section 2.3.1 (even if such liability does not become an actual liability until after the expiry of such period).

### 2.3.9 Provisions in the Accounts

No person included in the Purchasers' Indemnified Group shall be entitled to recover with respect to any claim for indemnification under this Agreement or the Tax Deed of Covenant in respect of any such claim if any allowance, provision or reserve is made for the matter giving rise to such claim in the Net Asset Statement (regardless of whether the allowance, provision or reserve is adequate to cover such claim).

### 2.3.10 Other Limitations

No person included in the Purchasers' Indemnified Group shall be entitled to recover with respect to any claim for indemnification under this Agreement or the Tax Deed of Covenant in respect of any matter, act, omission or circumstance (or any combination thereof)

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(including the aggravation of a matter or circumstance) to the extent that the same would not have occurred but for:

(a) any change in accounting or Tax policy, basis or practice introduced or becoming effective after the Closing Date;

(b) the effectiveness of, or any change in, any Law, rule or regulation or, to the extent generally available, any published administrative practice of any Governmental Authority, including any increase in the rates of Tax or any imposition of Tax or any withdrawal of relief from Tax, occurring after the date of this Agreement; or

(c) any act or omission of a Relevant Purchaser or any member of the Purchasers' Group, or their respective directors, employees or agents or successors in title, which occurs after the Closing and which is outside the ordinary course of business.

#### **2.3.11 Net Benefit**

To the extent that, as a result of any event or circumstance giving rise to a claim for indemnification, a person included in the Purchasers' Indemnified Group receives a corresponding savings or net benefit resulting from such event or circumstance, the amount of such claim for indemnification shall be reduced by the amount of such savings or benefit. In the case of any Tax Matter, the amount of such savings or benefit shall be reasonably determined (in writing with appropriate detail) by the independent certified accounting firm or chartered accounting firm which prepares or reviews the relevant Tax Returns on behalf of the Relevant Purchaser. A copy of such determination shall be delivered promptly to the Vendors' Guarantor upon its request.

#### **2.3.12 Mitigation of Loss**

Each Purchaser hereby covenants and agrees, for itself and each other member of the Purchaser's Indemnified Group, for the benefit of the members of the Vendors' Group, that after a claim for indemnity under this Agreement, the Non-North American Agreements or the Tax Deed of Covenant has arisen or is reasonably likely to arise, it shall take all commercially reasonable actions to mitigate the Losses of the members of the Vendors' Group under this Section 2.3; provided that (x) all reasonable costs and expenses (including overhead and administrative costs and expenses) of the Purchasers or any other member of Purchasers' Indemnified Group resulting from





such actions shall be reimbursed by the Vendors and (y) no Purchaser shall be required to take any action under this Section 2.3.12 which is outside of the ordinary course of the Operations.

#### **2.3.13 Prior Receipt**

If any member of the Vendors' Group pays an amount in discharge of any claim for indemnity under this Agreement or the Tax Deed of Covenant and a member of the Purchasers' Indemnified Group subsequently recovers (whether by payment, discount, credit, relief or otherwise) from a third party a sum which is referable to the subject matter of such claim and which would not otherwise have been received by such member of the Purchasers' Indemnified Group, the Purchasers shall pay, or shall procure that the Relevant Purchaser pays, to the US Vendor or the Canadian Vendor, as applicable, an amount equal to the lesser of (i) the sum recovered from the third party less any reasonable costs and expenses incurred in obtaining such recovery or (ii) the amount previously paid by the member of the Vendors' Group to discharge such claim for indemnity.

#### **2.3.14 Double Claims**

The members of the Purchasers' Indemnified Group shall not be entitled to recover from any member of the Vendors' Group under this Agreement, the Non-North American Agreements or the Tax Deed of Covenant more than once in respect of the same damage suffered. In furtherance and not in limitation of the foregoing, the member of the Vendors' Group shall not be liable in respect of any breach of this Agreement if and to the extent that the Losses are or have been included in a claim under the Tax Deed of Covenant or the Non-North American Agreements which has been satisfied, nor shall the members of the Vendors' Group be liable in respect of a claim under the Tax Deed of Covenant or the Non-North American Agreements if and to the extent that the Losses are or have been included in a claim for breach of this Agreement which has been satisfied.

#### **2.3.15 Environmental Claims**

In the event of any conflict between this Agreement and the provisions of Schedule 11, 12 or 16, the provisions of such Schedule shall supersede and control any conflicting Sections of this Agreement.

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### 2.3.16 Consequential and Punitive Damages

No member of the Purchasers' Indemnified Group shall be entitled to indemnification pursuant to this Agreement (i) with respect to consequential damages arising out of or in connection with this Agreement, except no such limitation shall apply with respect to such damages arising out of or in connection with the breach of the Restrictive Covenants or the failure to obtain the Third Party Consents or otherwise provide the Purchasers with the economic benefits of the Schedule 4 Contracts as set forth in Section 2.3.2(e), or (ii) with respect to punitive damages arising out of or in connection with this Agreement other than resulting from Vendors' fraud. In furtherance of the foregoing, no member of the Purchasers' Indemnified Group shall institute, directly or indirectly, and each Purchaser hereby permanently waives, on its behalf and on behalf of all other members of Purchasers' Indemnified Group, any right to commence any action or proceeding of any kind claiming consequential or punitive damages; provided, however, no such limitation or waiver shall apply to, and any member of the Purchasers' Indemnified Group shall continue to have the right to commence an action or proceeding claiming consequential damages with respect to the breach of the Restrictive Covenants or the failure to obtain the Third Party Consents or otherwise provide the Purchasers with the economic benefits of the Schedule 4 Contracts as set forth in Section 2.3.2 (e) or claiming punitive damages with respect to Vendors' fraud.

## 3 Consideration

### 3.1 Amount and Payment

(a) The aggregate consideration for the purchase of the Acquired Assets and the assumption of the Assumed Liabilities pursuant to this Agreement shall be an amount (such amount, as adjusted pursuant hereto, the **Purchase Price**) which is equal to £104.4 million;

(b) The Purchase Price and the Assumed Liabilities shall be allocated as set out in Schedule 3. The consideration is exclusive of any transfer Taxes in respect of which the provisions of Schedule 10 shall apply. The Purchase Price shall be paid by the US Purchaser on behalf of itself and the Canadian Purchaser to the US Vendor on behalf of itself and the Canadian Vendor, or as otherwise agreed by the US Purchaser and the US Vendor. The determination of the allocations of the Purchase Price and the amount of Assumed Liabilities among the Acquired Assets as set forth on Schedule 3 shall be made in accordance with Section 1060 of the Code and by mutual agreement of the US Vendor and the US Purchaser with respect to the US Assets and by mutual agreement between the Canadian Vendor and Canadian Purchaser with respect to the Canadian Assets. Each

of the US Vendor, the Canadian Vendor, the Vendors' Guarantor and the Relevant Purchaser shall sign and submit all necessary forms to report this transaction for Tax purposes of any Governmental Authority, in whichever combination necessary, in accordance with Schedule 3, and shall not take a position for Tax purposes inconsistent therewith.

### **3.2 Adjustments**

The Purchase Price may be reduced or increased in accordance with the provisions of Section 9 or in accordance with any other provisions of this Agreement stated to take effect as an adjustment to the Purchase Price. Any adjustment to the Purchase Price shall be allocated as provided by Temp. Treas. Reg. § 1.1060-IT(f) (or any successor regulation).

### **3.3 Method of Payment**

Wherever in this Agreement provision is made for payment by one party (the payer) to another (the payee), such payment shall be made by wire transfer of immediately available funds to an account designated by the payee as specified in the Payment Account Details of the payee.

## **4 Conditions**

### **4.1 Conditions Precedent**

The respective obligations of the parties to this Agreement to consummate the transactions to be performed by them pursuant to this Agreement are subject to the satisfaction of the following conditions:

4.1.1 the passing at a general meeting of the Vendors' Guarantor of a resolution to approve the transactions contemplated by this Agreement;

4.1.2 the Non-North American Sale and Purchase Agreement becoming unconditional in accordance with its terms (other than the satisfaction of any condition relating to this Agreement);

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4.1.3 any waiting period applicable to the acquisition of the Acquired Assets under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act) shall have terminated or expired;

4.1.4 no action, suit or proceeding shall be pending or threatened before any Governmental Authority wherein an unfavorable Judgment, order, decree, stipulation, injunction or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement, or (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation (and no such Judgment, order, decree, stipulation, injunction or change shall be in effect); and

4.1.5 the Non-North American Sale and Purchase Agreement shall not have terminated pursuant to Section 4.5 as a result of a Material Adverse Effect (as defined in such agreement).

#### **4.2 Responsibility for Satisfaction**

4.2.1 The Vendors shall use their best efforts to ensure the satisfaction of the condition set out in Section 4.1.1 as soon as reasonably practicable after the date hereof subject to compliance by the directors of the Vendors' Guarantor with their fiduciary duties.

4.2.2 The Vendors' Guarantor shall, as soon as reasonably practicable after the date hereof, mail a circular to the shareholders of the Vendors' Guarantor so as to inform them of this Agreement and so as to convene the general meeting of the Vendors' Guarantor referred to in Section 4.1.1 on or before May 15, 1999.

4.2.3 Each of the US Purchaser and US Vendor will as soon as practicable after the date hereof make all filings which are required to be made with any Governmental Authority under the HSR Act in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, with respect to the HSR Act, neither the US Vendor nor the US Purchaser shall be required to:

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(i) divest or hold separate any assets including assets of any Affiliate; or

(ii) agree to any limitation on their respective freedom of action with respect to, or their ability to retain any of their (or their Affiliate's) other assets or businesses.

4.2.4 The US Purchaser and US Vendor shall promptly inform each other of all communications with any Governmental Authority in connection with the condition referred to in Section 4.1.3.

4.2.5 Without limitation to the generality of the provisions set forth in this Section 4.3, all requests and inquiries from any Governmental Authority shall be dealt with by the US Vendor and the US Purchaser in consultation with each other.

4.2.6 The Vendors and the Purchasers shall each use all reasonable commercial efforts to cause the condition set forth in Section 4.1.2 to be satisfied as soon as reasonably practicable.

4.2.7 The Vendors' Guarantor shall promptly give notice to the US Purchaser of the satisfaction of the condition set out in Section 4.1.1, but not later than the close of business on the day following satisfaction of such condition.

4.2.8 The US Purchaser shall promptly give notice to the Vendors' Guarantor of satisfaction of the condition in Section 4.1.3, but not later than the close of business on the day following the satisfaction of each such condition.

#### 4.3 Termination

4.3.1 The parties to this Agreement may terminate this Agreement as follows:

(a) the parties to this Agreement may terminate this Agreement by mutual written consent of all the parties at any time prior to the Closing;

(b) the Purchasers may terminate this Agreement by giving written notice to the Vendors at any time prior to the Closing if the Closing shall not have occurred on or before July 31, 1999 by reason of the failure of any condition precedent under Section 4.1 (unless the failure

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results primarily from either Purchaser being in material breach of any warranty, or covenant contained in this Agreement); or

(c) the Vendors may terminate this Agreement by giving written notice to the US Purchaser at any time prior to the Closing if the Closing shall not have occurred on or before July 31, 1999 by reason of the failure of any condition precedent under Section 4.1 (unless the failure results primarily from the Vendors being in material breach of any Warranty, or covenant contained in this Agreement).

4.3.2 In the event of termination of this Agreement as provided in Section 4.3.1, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of any party, other than the provisions of Sections 19.1, 19.2 and 19.8 and except to the extent that such termination results from the willful and material breach by a party of any of its representations, warranties, covenants or other agreements set forth in this Agreement.

## **5 Action Pending Closing**

### **5.1 Vendors' General Obligations**

Pending Closing the Vendors shall:

5.1.1 conduct the Operations as a going concern in the ordinary course of business; and

5.1.2 subject to Section 5.3, allow the Purchasers and their agents, upon reasonable notice and at reasonable times, reasonable access to the Vendors' personnel, facilities and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to the Operations; permit and assist Purchasers and Purchasers' representatives to contact the Vendors' customers, prospects and suppliers; and provide Purchasers and Purchasers' representatives with such copies of the existing books, records, Tax Returns, work papers and other documents and information relating to the Operations and with such additional financial, operating and other data and information regarding the Operations, as Purchasers may reasonably request provided that the obligations of the Vendors under this Section shall be subject to any applicable confidentiality agreements relating to the Operations and shall not extend to allowing access to information which is reasonably regarded as confidential to the activities of Vendors' Group otherwise than in connection with the Operations.

## 5.2 Restrictions on Vendors

5.2.1 Without prejudice to the generality of Section 5.1.1, between the period from the date hereof to the Closing Date, the Vendors shall discuss with representatives of the Purchasers (nominated in advance by the Purchasers for such purpose and agreed to in writing by the US Vendor) in reasonable detail those actions that are material to the Operations, and the Vendors shall not, without the prior written consent of the Purchasers, which consent in the case of subsection (h) will not be unreasonably withheld or delayed :

(a) conduct the Operations in any manner except in the ordinary course of business it being agreed and understood that all established procedures for the approval of Contracts shall continue to be followed; or

(b) except for liabilities incurred in the ordinary course of business (which for purposes hereof shall include budgeted capital expenditures within the approval limits of the general management of the Operations), pay or incur or agree to pay or incur any amount, obligation or Liability relating to such Operations (absolute or contingent) (including in respect of any purchase, lease or other acquisition of assets) that is more than \$150,000 in any specific case or \$400,000 in the aggregate; or

(c) grant any general or uniform increase in the rates of pay or benefits to the Employees (or any class thereof) in excess of 3.5% per annum; or, except in connection with any severance or termination that will occur prior to Closing, enter into any new severance agreement that would be required to be disclosed pursuant to the Warranties contained herein; or enter into any collective bargaining agreement with respect to the Operations other than as may be required by Law or Contract; or

(d) except in the ordinary course of business, sell, transfer, mortgage, encumber, abandon or otherwise dispose of any assets or Liabilities relating to the Operations, except (x) for dispositions of property not greater than \$400,000 in the aggregate, (y) dispositions of Inventory relating to the Operations in the ordinary course of business or (z) as contemplated by this Agreement; or

(e) grant credit to any customer or distributor of the Operations on terms substantially more favorable than the terms on which credit has been extended to such customer or distributor in the past or change the terms of any credit previously extended; or

(f) settle any dispute, waive any right or cancel any debt or claim on behalf of or relating to the Operations other than in the ordinary course of business or that involves a payment or loss of benefit to the Operations in excess of \$150,000;

(g) take any action or omit to take any action, which action or omission will result in a breach of its Warranties and covenants contained herein;

(h) enter into any Material Contract; provided that this covenant shall not apply to (i) any Material Contract resulting from the submission in the ordinary course of business of any bid or tender on or prior to the date hereof for the supply or manufacture of products or services or (ii) any supply or delivery of products pursuant to a purchase order under any supply Contract in effect on the date hereof; or

(i) make any material changes in the terms or conditions of employment of, or employ, or agree to employ, any Senior Employee.

5.2.2 Between the date hereof and the Closing, the Vendors shall, in good faith, use all commercially reasonable efforts to preserve the Operations intact, retaining the services of the current employees, salesmen, contractors, agents and representatives of the Operations and maintaining the good will of suppliers, customers and persons having business relations in respect of the Operations.

5.2.3 Between the date hereof and the Closing, the Vendors shall (i) conduct the Operations in the ordinary course in a manner consistent with past practices, (ii) maintain all material Insurance policies, Permits and the material Contracts which are material to the Operations in full force and effect and (iii) comply in all material respects with all applicable Permits and Laws.

### 5.3 Purchasers' General Obligations

Each Purchaser hereby covenants and agrees that, prior to Closing, only those employees, directors, agents, representatives or advisors of Purchasers who have been identified in writing to George N. Benjamin, III, Peter Zinkin and Hans P. Berndorff shall communicate with any employees, agents, representatives, advisors, suppliers, customers or prospects of the Vendors regarding the transactions contemplated by this Agreement or visit any of the Real Properties.



## **6 Closing**

### **6.1 Date and Place**

Closing shall take place at the offices of US Vendor's Lawyers or at such other location agreed to by the parties, on the last Business Day of the US Vendor's accounting period (as set out in Part 2 of Schedule 6) which occurs after each of the conditions precedent set forth in Section 4.1 is satisfied or waived as permitted pursuant to this Agreement or at such other place, time or date as may be agreed between the US Purchaser and the US Vendor, provided that such later date shall be the last Business Day of an accounting period of the US Vendor;

### **6.2 Closing Events**

On Closing, the parties shall cause the events set forth in Part 1 of Schedule 6 for which they are respectively responsible to occur. Either party may waive the obligations of the other party as set forth in Part 1 of Schedule 6.

### **6.3 Payment of Price**

At the Closing against delivery of the Acquired Assets free and clear of all Encumbrances (except for such Encumbrances expressly permitted in this Agreement), and assumption of the Assumed Liabilities pursuant to the terms of this Agreement, the US Purchaser on behalf of itself and the Canadian Purchaser shall pay the US Vendor on behalf of itself and the Canadian Vendor, in the manner specified in Section 3.3, an amount which is equal to the amount set forth in Section 3.1.

## **7 Representations and Warranties**

### **7.1 Representations and Warranties from the Vendors; Incorporation of Schedule 8**

Knowing that the Purchasers are relying thereon, each of the Vendors, jointly and severally, represent and warrant to the Purchasers as set forth on Schedule 8, and, with respect to Vendors' Warranties set forth therein, Schedules 11 and 16, subject in each case to any matter which is disclosed in the Disclosure Letter.

## **7.2 Warranties from the Purchasers**

Knowing that the Vendors are relying thereon, each of the Purchasers, jointly and severally, represent and warrant to the Vendors as set forth on Schedule 9 and, with respect to Purchasers' representations and warranties set forth therein, Schedules 11 and 16.

## **7.3 Updating to Closing**

7.3.1 The Vendors further represent and warrant to the Purchasers that:

(i) subject to matters disclosed in the Disclosure Letter, the Warranties (other than those set out in Schedule 5) shall be true and accurate in all respects and not misleading in any respect at Closing, in each case as if they had been given at Closing; and

(ii) if prior to Closing, any Vendor shall become aware of any event or circumstance which results in or is reasonably likely to result in any of the Warranties being unfulfilled, untrue, misleading or incorrect in any material respect at Closing, the US Vendor shall promptly notify the US Purchaser in writing thereof prior to Closing.

7.3.2 The Purchasers further represent and warrant to the Vendors that if prior to the Closing, any Purchaser shall become aware of any event or circumstance which results in or is reasonably likely to result in any of the Warranties being untrue, misleading or incorrect in any material respect at Closing, such Purchaser shall promptly notify the US Vendor in writing thereof prior to Closing.

**8 [Intentionally Omitted]**

**9 Net Asset Statement, and Adjustments to the Purchase Price**

### **9.1 Basis of Preparation of Net Asset Statement**

As soon as practicable and in any event not later than 40 days following the Closing Date, the US Vendor shall prepare, or cause to be prepared, a statement (the **Net Asset Statement**) of the aggregate amount of the Acquired Assets less the aggregate amount of the Assumed Liabilities as at Closing, determined in accordance with the principles set forth in Schedule 7.

## 9.2 Preparation of Net Asset Statement

9.2.1 The draft Net Asset Statement shall be delivered to the US Purchaser by the US Vendor within 60 days following the Closing Date. Prior to such delivery, the US Vendor shall so far as is practicable consult with the US Purchaser with a view to reducing the potential areas of disagreement relating to such draft Net Asset Statement.

9.2.2 In order to enable the US Vendor to prepare and the US Vendor's accountants to review the draft Net Asset Statement, the Purchasers shall keep up-to-date and make available to the US Vendor's representatives and to the US Vendor's accountants all books and records relating to the Operations during normal office hours and co-operate with them with regard to the preparation and review of the draft Net Asset Statement. The Purchasers agree, in so far as it is reasonable to do so, to make available the services of the Employees (at reasonable times and upon reasonable notice and at reasonable intervals) to assist the US Vendor in the performance of its duties under this Agreement.

9.2.3 Unless within 60 days of delivery of the draft Net Asset Statement pursuant to Section 9.2.1, the US Purchaser gives notice to the US Vendor that it disagrees with the draft Net Asset Statement or any item thereof, which notice shall state the reasons for such disagreement in reasonable detail and specify the adjustments which in the US Purchaser's opinion should be made to the draft Net Asset Statement in order to comply with the requirements of this Agreement (the **US Purchaser's Disagreement Notice**), the draft Net Asset Statement shall be final and binding on the parties for all purposes. If the US Purchaser timely delivers a valid US Purchaser's Disagreement Notice within such 60-day period, the parties shall attempt in good faith to reach agreement in respect thereof and, if they are unable to do so within 21 days of such notification, either party may by notice to the other require that the draft Net Asset Statement be referred to the Reporting Accountants (an **Appointment Notice**).

9.2.4 Within 21 days of the giving of an Appointment Notice, the US Vendor may by notice to the US Purchaser indicate that, in the light of the fact that the US Purchaser has not accepted the draft Net Asset Statement in its entirety, it wishes the Reporting Accountants to consider matters relating to the Net Asset Statement in response to those specified in the US Purchaser's Disagreement Notice, such notice stating in reasonable detail the reasons for such additional consideration and in what respects the US Vendor believes that the draft Net Asset Statement should be altered (the **US Vendor's Disagreement Notice**).

9.2.5 The Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Section 9.2 and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, *inter alia*, to the provisions of this Section 9.2) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 30 days of their identity having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, those accountants shall be deemed never to have become the Reporting Accountants and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement.

9.2.6 Except to the extent that the parties agree otherwise, the Reporting Accountants shall determine their own procedure except that:

(a) apart from procedural matters and as otherwise set out in this Agreement, the Reporting Accountants shall determine only:

(i) whether any of the arguments for an alteration to the draft Net Asset Statement put forward in the US Purchaser's Disagreement Notice or the US Vendor's Disagreement Notice is correct in whole or in part; and

(ii) if so, what alterations should be made to the draft Net Asset Statement in order to comply with the requirements of this Agreement;

(b) the Reporting Accountants shall apply the principles set out in Schedule 7;

(c) the Reporting Accountants shall make their determination pursuant to Section (a) above as soon as is reasonably practicable but in any event, unless otherwise specified, within 40 days of the referral to them; and

(d) the procedure of the Reporting Accountants shall:

(i) provide the parties a reasonable opportunity to make written and oral submissions to them;

(ii) require that the parties supply their written submissions at the same time as they are made to the Reporting Accountants;

(iii) permit each party to be present while oral submissions are being made by any other party; and

(iv) provide that the Reporting Accountants shall not be entitled to determine the scope of their own jurisdiction.

9.2.7 The Reporting Accountants' determination pursuant to Section 9.2.6(a) shall (i) be made in writing and delivered to the parties promptly and (ii) unless otherwise agreed by the parties include reasons, in reasonable detail, for each relevant determination.

9.2.8 The determination of the Reporting Accountants of any matter falling within their jurisdiction shall be final and binding on the parties upon delivery thereof pursuant to Section 9.2.7, except in the event of manifest error (when the relevant part of their determination shall be void and the matter shall be remitted to the Reporting Accountants for correction). In particular, without limitation, the determination of the Reporting Accountants shall be deemed to be incorporated into the draft Net Asset Statement, which shall then be final and binding on the parties except in the case of manifest error as provided herein.

9.2.9 The expenses of the Reporting Accountants shall be borne as they shall direct at the time they make any determination under Section 9.2.6(a) or, in the absence of such direction, equally between the US Purchaser, on the one hand, and the US Vendor, on the other.

9.2.10 The parties shall co-operate with the Reporting Accountants and comply with their reasonable requests made in connection with the carrying out of their duties under this Agreement. In particular, without limitation, the Purchasers shall keep up to date and, subject to reasonable notice, make available to the Vendors' representatives, the Vendors' accountants and the Reporting Accountants, all books and records relating to the Operations during normal office hours during the period from the appointment of the Reporting Accountants to the making of the relevant determination.

9.2.11 Subject to Section 9.2.12, nothing in this Section 9.2 shall entitle a party or the Reporting Accountants access to any information or document which is protected by legal professional privilege, or which has been prepared by the other party or its accountants or other professional advisors with a view to assessing the merits of any claim or argument.

9.2.12 A party shall not be entitled by reason of Section 9.2.11 to refuse to supply such part or parts of documents as contain only the facts on which the relevant claim or argument is based.

9.2.13 Each party and the Reporting Accountants shall, and shall cause each of their respective accountants and other advisors to keep all information and documents provided to them pursuant to this Section 9.2 confidential and shall not use the same for any purpose, except for use in connection with the preparation of the Net Asset Statement, the proceedings of the Reporting Accountants or another matter arising out of this Agreement or in defending any claim or argument or alleged claim or argument relating to this Agreement or its subject matter.

### **9.3 Net Asset Statement**

Once the US Vendor and the US Purchaser reach (or pursuant to Section 9.2.3 are deemed to reach) agreement on the draft Net Asset Statement or the draft Net Asset Statement is finally determined at any stage of the procedures set out in this Section 9:

9.3.1 the draft Net Asset Statement as so agreed or determined shall constitute the Net Asset Statement for the purposes of this Agreement and shall be final and binding on the parties; and

9.3.2 the Net Asset Value shall be derived from the Net Asset Statement.

#### **9.3.3 Net Assets**

The parties hereto agree as follows:

(a) if the Net Asset Value is less than £138 million (the **Agreed Upon Net Asset Value**), then the US Vendor (on behalf of itself and the Canadian Vendor) shall pay to the US Purchaser (on behalf of itself and the Canadian Purchaser) an

amount equal to the difference between the Agreed Upon Net Asset Value and the Net Asset Value; or

(b) if the Net Asset Value is more than the Agreed Upon Net Asset Value, then the US Purchaser (on behalf of itself and the Canadian Purchaser) shall pay to the US Vendor (on behalf of itself and the Canadian Vendor) an amount equal to the difference between the Net Asset Value and the Agreed Upon Net Asset Value;

such payment to be made no later than the third Business Day following agreement or determination of the Net Asset Statement in accordance with this Section 9;

9.3.4 Where any payment is required to be made pursuant to this Section 9.3:

(a) interest shall accrue on the relevant amount calculated from the Closing Date in accordance with Section 19.10;

(b) the Purchase Price shall be deemed reduced or increased accordingly; and

(c) the allocation of the consideration in Schedule 3 shall be adjusted accordingly in such manner as the US Vendor on behalf of itself and the Canadian Vendor and the US Purchaser on behalf of itself and the Canadian Purchaser shall agree in accordance with Schedule 3.

## **10 Transfer Taxes**

The provisions of Schedule 10 shall apply.

## **11 Post-Closing Date Contract payments received by the Vendors**

To the extent that any payment is made to the Vendors in respect of any Contract after the Closing Date, the Vendors shall receive the same as trustee and pay the same to the Purchasers (net of any Tax payable by the Vendors thereon) as soon as reasonably practicable following receipt.

## **12 Defective Product or Service**

### **12.1 Responsibility Allocation**

The Vendors and the Purchasers agree that any defective product (as defined in Section 12.2 below) manufactured (as defined in Section 12.2 below) and/or sold or defective service (as defined in Section 12.2 below) supplied prior to Closing in connection with the Operations shall be the responsibility of the US Vendor or Canadian Vendor, as the case may be; and that any defective product manufactured and/or sold or defective service supplied after Closing in connection with the Operations shall be the responsibility of the US Purchaser or Canadian Purchaser, as the case may be.

### **12.2 Definitions**

A "defective product" or a "defective service" means a product or service supplied or provided in connection with the Operations that does not conform to its express or implied contractual requirements, whether in terms of performance, quality, time of delivery or in any other respect. A product shall be considered as "manufactured" when it has successfully passed through final testing at the factory of the Operations and any reference to manufacturing or manufacture in this Section 12 shall have such a meaning.

### **12.3 Vendor receives claim**

(a) If, following Closing, a Vendor receives a claim from any person in respect of a defective product manufactured and/or sold or defective service supplied before Closing, it shall inform the Purchasers immediately and take steps to investigate, report on, and take (in its view) appropriate and prompt remedial action in respect of such defective product or defective service.

(b) If the claim can be settled by a payment alone, the US Vendor or the Canadian Vendor, as appropriate, shall be responsible for meeting the contractual obligations of the supplier/provider of the defective product or defective service in that respect.

(c) If the claim involves the supply of a replacement and/or the removal, repair and reinstallation of the defective product or the re-engineering or re-doing of work pursuant to a service supplied, the Relevant Purchaser shall, perform the necessary work for such Vendor, at Purchaser's fully absorbed manufacturing cost plus 5%.



(d) If the claim involves both a payment and the repair or replacement of a product or part of a product or the re-engineering or other re-doing of work in respect of a service, the payment shall remain the responsibility of the Vendors, but the provisions of clause (c) above shall apply to the repair, replacement or re-engineering.

#### **12.4 Purchaser receives claim**

If, following Closing, a claim in respect of a defective product manufactured and sold or defective service supplied before Closing is received by the US Purchaser or Canadian Purchaser, such Purchaser shall promptly notify the Vendors of the claim and:

12.4.1 if, in the joint opinion of US Vendor and US Purchaser, the claim is partly or wholly justified on contractual grounds, the US Purchaser or the Canadian Purchaser, as appropriate, shall take all reasonable steps as instructed by the Relevant Vendor, without prejudicing the legitimate interests of the Vendors, to repair, replace and make good the defective product or defective service and/or compensate the claimant to the extent appropriate in accordance with the terms of the relevant applicable contract. The US Vendor and/or the Canadian Vendor shall indemnify and hold harmless the Relevant Purchaser against all Losses which arise in connection with the repair, replacement or making good of the defective product or defective service, provided that if the Losses result from the repair or replacement of a product or part of a product or the re-engineering or other re-doing of work in respect of a service, the US Vendor's and Canadian Vendor's obligation with respect to such indemnity shall be limited to the Relevant Purchaser's fully absorbed manufacturing cost of such repair plus 5%; and

12.4.2 where the US Vendor and the US Purchaser are unable to reach agreement on the extent to which the claim is justified and how it is to be dealt with within 21 days of either party receiving notice of the claim (both parties acting reasonably and negotiating in good faith), the Purchasers shall be entitled to take such action with respect to the claim as they believe is appropriate, provided, however, in dealing with the claim each Purchaser shall use its commercially reasonable efforts to minimize the costs.

#### **12.5 Vendors receive claim for post-Closing product or service**

If a claim in respect of a defective product manufactured and sold or defective service supplied after Closing is made against a Vendor, it shall inform the Purchasers promptly and the

Purchasers shall be solely responsible for such claim, and the Purchasers shall indemnify and hold harmless the Vendors against all Losses which arise in connection with such claim.

#### **12.6 Claim made for product or service spanning Closing**

If a claim is made against the Vendors or Purchasers after Closing in respect of a defective product partly manufactured or defective service partly supplied in the period both before and after Closing, unless the defect can be clearly established as being wholly attributable to acts or omissions either before or after Closing (in which case either Section 12.3, Section 12.4 or 12.5 (as the case may be) above shall apply), the costs to satisfy the claim shall be shared equally between the Relevant Vendor and the Relevant Purchaser.

#### **12.7 Indemnities reduced by recovery from third parties**

Indemnities applicable under this Section 12 shall be reduced to the extent a Vendor or a Purchaser is able to recover any costs incurred either from insurance or from a third party, and each of the Vendors and the Purchasers undertake to use all commercially reasonable efforts to review the possibility of all such recoveries and act accordingly, keeping the other fully informed of its actions, and (in the case of legal proceedings) consulting with the other at each stage of the proceedings.

### **13 Third Party Consents**

#### **13.1 Failure to Assign**

If the Vendors cannot assign to the Relevant Purchaser at Closing any of the Contracts which are being transferred to Relevant Purchaser pursuant to this Agreement because a required Third Party Consent has not been obtained, then such Contracts shall not be assigned by the Vendors at Closing, but:

13.1.1 shall be held in trust for or for the benefit of the Relevant Purchaser from Closing until such Third Party Consent is obtained, at which time the Relevant Vendor shall assign such Contracts to the Relevant Purchaser. Pending such assignment the Relevant Purchaser shall perform (as agent or sub-contractor of the Relevant Vendor) all the obligations of the Relevant Vendor thereunder and the Relevant Vendor shall otherwise cooperate in any reasonable arrangements proposed by the Relevant Purchaser designed to obtain for the Relevant Purchaser the benefits of

the Contract which is being held in trust for or for the benefit of the Relevant Purchaser. If such Contract prohibits the Relevant Purchaser from acting as an agent or sub-contractor of the Relevant Vendor, then, if requested by the Relevant Purchaser, the Relevant Vendor shall do (or cause to be done) all such acts as may be required for the performance of such Contract so as to provide the Relevant Purchaser with the benefits, subject to the burdens on the basis provided in this Agreement, of such Contract;

13.1.2 the Relevant Vendor shall, at the request of the Relevant Purchaser and at the cost of the US Vendor, make or assist the Relevant Purchaser in making application for and obtaining any such Third Party Consent, such that the Third Party Consent is effective from Closing. The Relevant Purchaser shall supply to the Relevant Vendor such information and references regarding the financial position of the Relevant Purchaser as may reasonably be requested by the Relevant Vendor and shall enter into such direct covenants in favour of any relevant third party as may reasonably be requested in respect of any rents, royalties, fees or other outgoings or liabilities for which the Relevant Purchaser will subsequent to Closing become liable. If required by any third party, the Relevant Purchaser shall give such reasonable additional covenants requested by any third party as a condition to receiving such Third Party Consent and shall generally use all reasonable endeavours to secure such consent; and

13.1.3 for such time as any Contracts are being held in trust for or for the benefit of the Relevant Purchaser, the Relevant Vendor will (so far as it lawfully may) give all reasonable assistance to the Relevant Purchaser to enable the Relevant Purchaser to enforce its rights under such Contracts.

### 13.2 Indiana Lease

The Lease for the Indianapolis polymer plant (the **Indianapolis Lease**) shall not be assigned to the Purchasers at Closing, but shall nevertheless be held in trust for the benefit of the US Purchaser and the US Purchaser shall be entitled to all of the benefits of the Indianapolis Lease from and after the Closing. In connection therewith, the US Purchaser shall be permitted to occupy the facility and operate the plant which is the subject of the Indianapolis Lease. The US Purchaser shall comply with all of the obligations of the lessee under the Indianapolis Lease except for the rental obligations under Section 3 thereof. The parties have agreed that the US Vendor will pay to the Landlord all rental payments due under Section 3 of the Indianapolis Lease through and until December 26, 2005. The US Purchaser will pay to the US Vendor the amount of \$336,700 per annum, payable in two equal installments on each December 15 and June 15 occurring during the

period from the date hereof until December 26, 2005, and the US Purchaser shall perform all of the other obligations of the US Vendor under the Indianapolis Lease from and after the Closing; provided, however, that the US Vendor agrees to take such action as may be reasonably requested by the US Purchaser on its behalf to maintain, preserve, protect, exercise or the like, any and/or all of the tenant's rights under the Indianapolis Lease. In the event the US Purchaser fails to make the payment it is required to make as described above after the expiration of 10 days after receipt of notice from US Vendor, in addition to any other remedies which may be available under law or hereunder, the US Vendor may elect to terminate US Purchaser's right to occupy the facility and recover possession thereof as if this Agreement constituted a sublease of such premises to US Purchaser. The US Purchaser shall operate and maintain the facility pursuant to Section 8 of the Indianapolis Lease, shall maintain insurance pursuant to Section 10 of the Indianapolis Lease, and shall have the right to require the US Vendor to exercise the lessee's rights under the Indianapolis Lease, including, without limitation, those rights specified in: Section 11 (Rights to Assign or Sublease); Section 12 (Lease Renewal; Purchase Options); Section 13 (Notices for Renewal and Purchase; Determination of Fair Market Value); and Section 14 (Obsolescence Termination); provided, however, that (1) US Purchaser shall have no right to assign its rights hereunder with respect to the Indianapolis Lease or to sublease the premises leased thereby without the prior written consent of US Vendor, such consent not to be unreasonably withheld, delayed or conditioned and US Purchaser shall have no right to require that US Vendor exercise the lessee's rights specified in Section 11 of the Indianapolis Lease unless in either instance (i) US Purchaser shall indemnify and hold US Vendor harmless from and against any and all liability which may arise as a result of such assignment or sublease or the exercise of such rights, as the case may be, and (ii) the form of the indemnity agreement and the financial condition of the indemnitor shall be reasonably satisfactory to US Vendor; (2) in connection with any renewal or extension of the term of the Indianapolis Lease, US Vendor shall be released by the landlord from all prospective liability and obligations thereunder accruing from and after December 26, 2005, (3) in connection with the exercise of any purchase option, either (a) US Vendor shall be released by the landlord under the Indianapolis Lease from all liability and obligations in connection with the purchase of the Real Property underlying the Indianapolis Lease or (b) US Purchaser shall indemnify and hold US Vendor harmless from and against any and all Liability which may arise as a result of the exercise of such purchase option and shall assume all obligations which relate to the purchase of such Real Property. The US Vendor agrees that it will neither amend nor consent to any amendment to the Indianapolis Lease without the prior written consent of the US Purchaser, which consent may be withheld in the US Purchaser's sole and absolute discretion. The US Vendor and its Affiliates will have no further obligation to perform under the Indianapolis Lease after December 26, 2005. The US Purchaser and the Purchasers' Guarantor hereby indemnify and hold harmless the Vendors' Indemnified Group from and against all



Losses that they may incur under or with respect to the Indianapolis Lease from and after the Closing Date other than the payment obligations set forth above, or any other default by the US Vendor pursuant to the terms and provisions of this Section. The US Vendor and the Vendors' Guarantor hereby indemnify and hold harmless the Purchasers' Indemnified Group from and against all Losses that they may incur under or with respect to the Indianapolis Lease from and after the Closing Date with respect to the US Vendor's failure to perform its obligations under this Section, or with respect to any lawsuit, action or cause of action brought by the "Owner Trustee" under the Indianapolis Lease for a default with respect to the payment obligations set forth above, or the performance of any obligation required of the US Vendor thereunder.

#### **14 Employees**

The terms and conditions set forth in Schedules 11, 11A, 11B and 11C are hereby incorporated into this Agreement by reference.

#### **15 Employee Benefit Arrangements**

The terms and conditions set forth in Schedule 12 are hereby incorporated into this Agreement by reference.

#### **16 Environmental**

The terms and conditions set forth in Schedule 16 are hereby incorporated into this Agreement by reference.

#### **17 Post-Closing Obligations**

##### **17.1 The Assumed Liabilities**

17.1.1 If the Vendors become aware after Closing of any claim which constitutes or may constitute an Assumed Liability, the Vendors shall as soon as reasonably practicable give written notice thereof to the Purchasers and shall not admit, compromise, settle, discharge or otherwise deal with such claim without prior consultation with and the prior agreement of the Purchasers.



17.1.2 The Vendors shall, at the Purchasers' expense, take such action as the Purchasers may reasonably request to avoid, dispute, resist, appeal, compromise, defend or mitigate any claim which constitutes an Assumed Liability, in each case subject to the Vendors being indemnified and secured to their reasonable satisfaction by the Purchasers against all Losses which may thereby be incurred. In connection therewith, the Vendors shall make or cause to be made available to the Purchasers or their duly authorized agents, at the Purchasers' cost, on reasonable notice during normal business hours, all relevant accounting books and records, and correspondence relating to the Operations which have been retained by the Vendor (and shall permit the Purchasers to make copies thereof) for the purposes of enabling the Purchasers to ascertain or extract any information relevant to the claim.

## **17.2 Bonds and Guarantees**

17.2.1 The Purchasers shall use their best efforts with the Vendors' assistance to cause, effective from the Closing Date, the release of the Vendors or any person included in the Vendor Group from any bonds or guarantees issued by banks or other financial service providers on behalf of any of them in respect of the Operations (relating to non-completed contracts) as shown in Schedule 18 (for the period up to and including December 31, 1998, and after December 31, 1998 to Closing for such bonds or guarantees entered into in the ordinary course of the Operations) or in any event as soon as practicable after Closing.

17.2.2 After Closing but prior to such release the Purchasers will indemnify and hold harmless the Vendors (for themselves and as trustee for each member of the Vendors' Group) from and against any Losses arising after Closing in respect of any such bonds or guarantees (including drawings thereunder) to the extent resulting from actions of the Purchasers or any member of the Purchasers' Group relating to any such bonds or guarantees referred to in Section 17.2.1 or their respective underlying contracts or tenders.

17.2.3 After Closing if any of the bonds or guarantees referred to in Section 17.2.1 are drawn upon, then the Vendors will indemnify and hold harmless the Purchasers for any Losses in respect of any such bonds or guarantees (including drawings thereunder) to the extent resulting from the actions of any Vendor (as the case may be) before Closing as agreed to by the Vendors and Purchasers.

### 17.3 Vendors' General Obligations

If at any time after Closing, any Vendor or any person included in the Vendors' Group receives any monies (other than insurance proceeds) in respect of any claim included in the Acquired Assets or in respect of any Accounts Receivable, then the appropriate Vendor or appropriate person included in the Vendors' Group shall pay to the Purchasers as soon as reasonably practicable after receipt of such monies, the amount received.

### 17.4 Vendors' Continuing Obligation

Notwithstanding Closing, the Vendors shall execute such documents and take such actions as the Purchasers may reasonably require for the purpose of giving to the Relevant Purchaser the full benefit of all the provisions of this Agreement.

### 17.5 Change of Name

17.5.1 The Purchasers shall, subject to Section 17.5, have the right to continue to use the trade marks and trade names that are Excluded Assets on a royalty free, non-exclusive basis for a period of 12 months from the Closing Date but solely on the products on and in the manner in which they were being used immediately before Closing; provided that commencing 30 days from Closing the US Purchaser shall, or shall cause that the Relevant Purchaser shall, use its reasonable efforts to make clear on all publicity material (excluding factory signs), bank checks, letterheads and invoices that the US Business and the Canadian Business are part of the Purchasers' Group.

17.5.2 The Purchasers shall be entitled to use and have the right to sublicense to any member of the Purchasers' Group (but only for so long as such person remains a subsidiary (direct or indirect) of the Purchasers' Guarantor) the name "BICC" only in conjunction with the name "General Cable" as the name of any corporate entity, partnership, or other vehicle which, in all cases, is primarily involved in the manufacture, sale or distribution of energy cables.

17.5.3 The Purchasers shall be entitled to use and have the right to sublicense to any member of the Purchasers' Group (but only for so long as such person remains a subsidiary (direct or indirect) of the Purchasers' Guarantor) the name "Brand Rex" only preceded by the name "General Cable" as the name of any corporate entity, partnership or other vehicle which, in all cases, is solely involved in the manufacture, sale or distribution of Specialty Cables in the US, Canada or Mexico.

17.5.4 The Purchasers shall not be entitled to register, use or otherwise employ the name "Brand Rex" on any Data Cable product wherever manufactured or sold. The Purchasers acknowledge that the Vendors shall be entitled to use the name "Brand Rex" on any Data Cable product world-wide and on any Specialty Cables (other than sales to customers located in the US, Canada or Mexico).

17.5.5 The Vendors shall not be entitled to register, use or otherwise employ the name "Brand Rex" on any cable sold to specialty cable manufacturers located in the US, Canada or Mexico.

17.5.6 For the purpose of this Section 17.5:

"Specialty Cables" means cables sold or for use in airplanes, ships, locomotives, trucks, or other forms of vehicular transport (or otherwise currently manufactured in the US by the Brand Rex division of BICC Cables Corporation) other than Data Cables.

"Data Cables" means cables primarily intended for the transmission of data in local or wide area networks, examples being category 5, 6 and 7 data cables.

17.6 The Vendor hereby grants, and shall cause each member of the Vendor's Group to grant, to each of the Relevant Purchasers with effect from Closing a royalty-free, irrevocable, perpetual license to use the Intangible Property and Know-How that are Excluded Assets and that are required for the Operations (as conducted at Closing) to be used for the purposes of the Operations, as each of the Operations develop from time to time, with a right to sublicense such Intangible Property and Know-How to other members of the Purchaser's Group.

#### 17.7 Investment Canada Act

17.7.1 The Canadian Purchaser shall, within thirty days after Closing, give notification of the purchase of the Canadian Assets by the Canadian Purchaser as required by the Investment Canada Act.

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## **18 Guarantees**

### **18.1 Vendors' Guaranteed Obligations**

In consideration of the Purchasers' Guarantor entering into the guarantee in Section 18.3, the Vendors' Guarantor hereby *unconditionally and irrevocably guarantees to each of the Purchasers the due and punctual performance and observance by the Vendors or any of their assignees pursuant to Section 19.5.1 or 19.5.2 of all their obligations, commitments, undertakings, warranties and indemnities under or pursuant to this Agreement or the Tax Deed of Covenant (the Vendors' Guaranteed Obligations).*

### **18.2 Guaranty**

If and whenever any of the Vendors defaults for any reason whatsoever in the performance of any of the Vendors' Guaranteed Obligations, the Vendors' Guarantor shall forthwith upon written demand served in accordance with this Agreement *unconditionally perform (or cause the performance of) and satisfy (or cause the satisfaction of) the Vendors' Guaranteed Obligations in regard to which such default has been made in the manner prescribed by this Agreement and so that the same benefits shall be conferred on the US Purchaser or the Relevant Purchaser (as the case may be) as it would have received if the Vendors' Guaranteed Obligations had been duly performed and satisfied by the Relevant Vendor.*

### **18.3 Purchaser's Guaranteed Obligations**

In consideration of the Vendors entering into this Agreement, the Purchasers' Guarantor hereby *unconditionally and irrevocably guarantees to the Vendors the due and punctual performance and observance by the US Purchaser, the Canadian Purchaser, any Relevant Purchaser or any of their assignees pursuant to Section 19.5.1 or 19.5.2 of all their obligations, commitments, undertakings, warranties and indemnities under or pursuant to this Agreement (the Purchaser's Guaranteed Obligations).*

### **18.4 Guaranty**

If and whenever any of the Relevant Purchasers defaults for any reason whatsoever in the performance of any of the Purchaser's Guaranteed Obligations, the Purchasers' Guarantor shall

forthwith upon written demand served in accordance with this Agreement unconditionally perform (or cause performance of) and satisfy (or cause the satisfaction of) the Purchaser's Guaranteed Obligations in regard to which such default has been made in the manner prescribed by this Agreement and so that the same benefits shall be conferred on the Vendors as it would have received if the Purchaser's Guaranteed Obligations had been duly performed and satisfied by the Relevant Purchaser.

## **19 Other Provisions**

### **19.1 Announcements**

19.1.1 Pending Closing, the Vendors and the Purchasers shall, subject to the requirements of Law or any regulatory body or the rules and regulations of any recognized stock exchange, consult together prior to issuing any formal announcement, press release, circular, or notice to shareholders, employees, customers, suppliers, distributors and sub-contractors and to any recognized stock exchange or other authorities or to the media or otherwise which either party may desire or be required to make regarding this Agreement or any of the transactions contemplated hereby or thereby.

19.1.2 No party shall, pending Closing, make or authorize or issue any formal announcement, circular or other communication concerning this Agreement or any of the transactions contemplated hereby or thereby unless (a) the other party shall have approved such disclosure or (b) such disclosure is required by applicable Law or the rules and regulations of an applicable stock exchange.

19.1.3 If Closing does not take place, the Purchasers shall forthwith promptly return all accounts, records, documents and papers of or relating to the Vendors or the Operations which shall have been made available to them and all copies, abstracts or other records derived from such materials and expunge any information derived from such materials or otherwise concerning the subject matter of this Agreement from any computer, wordprocessor or other device containing information, provided that this shall not apply to information available from public records or information acquired by a Relevant Purchaser otherwise than from the Vendors or their agents.

## 19.2 Confidential Information

### 19.2.1 The Vendors:

(a) shall not, and shall cause all other members of the Vendors' Group, and each of their respective directors, officers or employees or advisors or agents or representatives not to, disclose to any person Confidential Information; and

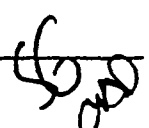
(b) shall use reasonable efforts to prevent the disclosure of Confidential Information by any person other than by members of the Purchasers' Group; and

(c) in the event either Vendor is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the Vendors will notify the Purchasers promptly of the request or requirement so that the Purchasers may seek an appropriate protective order or waive compliance with the provisions of this Section 19.2.1(c). If, in the absence of a protective order or the receipt of a waiver under this Section 19.2.1(c), the Vendors are, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal, the Vendors may disclose the Confidential Information to the tribunal. However, the Vendors shall cooperate with the Purchasers in obtaining, at the reasonable request and expense of the Purchasers, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Purchasers shall designate.

### 19.2.2 The Purchasers:

(a) shall not, and shall cause all other members of the Purchasers' Group and each of their respective directors, officers or employees or advisors or agents not to disclose to any person Confidential Information; and

(b) shall use reasonable efforts to prevent the disclosure of Confidential Information by any person other than by members of the Vendors' Group.



**19.3 Permitted Disclosure, etc.**

**19.3.1 Section 19.2.1 does not apply to:**

- (a) disclosure of Confidential Information to or at the written request of a Relevant Purchaser;
- (b) disclosure of Confidential Information required to be disclosed by Law, regulation, any revenue authority or any stock exchange;
- (c) disclosure of Confidential Information to professional advisors for the purpose of advising a Vendor; provided that such advisors shall be made aware of the confidential nature of such information;
- (d) disclosure of Confidential Information for the purposes of defending any claim under the Warranties (including making any claims or counterclaims against third parties pursuant to Section 8.3.2); or
- (e) Confidential Information which is in the public domain other than by the Vendors' breach of Section 19.2.1.

**19.3.2 Section 19.2.2 does not apply to:**

- (a) disclosure of Confidential Information to or at the written request of a Relevant Vendor;
- (b) disclosure of Confidential Information required to be disclosed by Law, regulation, any revenue authority or any stock exchange;
- (c) disclosure of Confidential Information to professional advisors for the purpose of advising a Relevant Purchaser provided that such advisors shall be made aware of the confidential nature of such information; or
- (d) Confidential Information which is in the public domain other than by the Purchaser's breach of Section 19.2.2.



19.3.3 For the purpose of this Agreement, **Confidential Information** means, (i) for the purposes of Section 19.2.1 all information relating to the Vendors' business, including but not limited to know-how, trade secrets, customer and supplier lists, marketing plans and strategies, designs, pricing and cost information, drawings, technical information and other proprietary information relating to the Operations or financial or other affairs (including future plans and targets) of the Vendors and which is not in the public domain; and (ii) for the purposes of Section 19.3, all information relating to the business, financial or other affairs (including future plans and targets) of any company in the Vendors' Group, other than in respect of the Operations, and which is not in the public domain.

#### **19.4 Integration**

This Agreement, together with the Schedules hereto, the Disclosure Letter, and the Tax Deed of Covenant constitute the entire agreement among the parties relating to the subject matter of this Agreement and supercede all prior oral and written presentations, understandings, agreements, representations, warranties or other information by or among the parties (or any of their respective Affiliates, directors, officers, trustees, employees, agents, accountants, attorneys or other advisors or representatives) with respect to the subject matter hereof, and no such prior or subsequent oral understanding, agreement, representation or warranty shall be or be deemed to be a part of this Agreement, the Schedules hereto, the Disclosure Letter or the Tax Deed of Covenant except in accordance with Section 19.6.

#### **19.5 Successors and Assigns; No Third-Party Beneficiaries**

19.5.1 Any of the Vendors or Purchasers may, except as otherwise expressly provided in this Agreement and without the consent of the other, assign to a wholly owned Subsidiary of such party the benefit of all or any part of any other party's obligations under this Agreement; provided, however, that such assignment shall not be absolute but shall be expressed to have effect only for so long as the assignee remains a wholly owned Subsidiary.

19.5.2 This Agreement is, subject to Section 19.5.1, personal to the parties to it. Accordingly, no party may, without the prior written consent of the Purchasers and the Vendors' Guarantor, assign either this agreement or any of its rights, interests or obligations under this Agreement; provided, however, the US Purchaser and Canadian Purchaser and the Purchasers' Guarantor may assign all of their rights hereunder and delegate all of their obligations hereunder to any person to whom the US Purchaser or Canadian Purchaser sells a substantial part of the assets

of the US Business or Canadian Business and the Vendors and the Vendors' Guarantor may assign all of their rights and delegate all of their obligations hereunder to any person to whom the Vendors or the Vendors' Guarantor sell a substantial part of their respective assets. This Agreement shall bind, benefit, and be enforceable by and against each party hereto and its successors and permitted assigns.

19.5.3 Unless specifically stated herein, this Agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns.

#### **19.6 Amendments and Waivers**

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each of the parties hereto. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant under this Agreement, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant under this Agreement or affect such occurrence.

#### **19.7 Remedies**

So far as is permitted by law and except in the case of fraud, the parties agree and acknowledge that the only remedies available to the Purchasers in connection with or arising out of this Agreement are set forth in Section 2.3 of this Agreement.

#### **19.8 Third Party Costs**

Except as set forth in Schedule 10, the Vendors shall bear all legal, accounting and other third party costs and expenses incurred by them in connection with this Agreement, and the Tax Deed of Covenant and the sale of the Operations. The Purchaser shall bear all such costs and expenses incurred by it and any other Relevant Purchaser.

#### **19.9 Costs to Assign Contracts**

The Vendors and Purchasers agree to co-operate and to use all reasonable commercial efforts prior to and subsequent to Closing to ensure that all Contracts included in the Acquired Assets are lawfully assigned to the Purchasers with effect from the Closing or as soon as

practicable thereafter or that the Purchaser otherwise receives the benefits of such Contracts. If there are any reasonable costs or expenses associated with assigning or otherwise transferring such Contracts (including any rent, royalties, costs of obtaining estoppels or other fees or payments made or required to be made in connection with the assignment or transfer of any such Contracts) such reasonable cost or expenses shall be paid by the Vendors; provided that, except as provided in Section 2.3.2(e), the Vendors shall not be responsible for any Losses resulting from the failure of Purchaser to obtain the benefits of any Contract to be assigned or transferred. Each Purchaser shall take all commercially reasonable actions to eliminate or reduce any costs or expenses that may be payable by a Vendor hereunder; provided that (x) all reasonable costs and expenses (including overhead and administrative costs and expenses) of the Purchasers resulting from such actions shall be reimbursed by the Vendors and (y) no Purchaser shall be required to take any action under this Section 19.9 which is outside of the ordinary course of the Operations.

#### **19.10 Interest**

If any Vendor or any Relevant Purchaser defaults in the payment when due of any sum payable under this Agreement or the Tax Deed of Covenant (whether determined by agreement or pursuant to an order of a court or otherwise) their Liability shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (as well after as before Judgment) at a rate per annum of 2 per cent above the base rate for US dollar loans in New York from time to time of The Hong Kong and Shanghai Banking Corporation Limited. Such interest shall accrue from day to day.

#### **19.11 Set-Off**

Under no circumstances shall any amounts (if any) payable by any Relevant Purchaser to any Vendor or by any Vendor to any Relevant Purchaser pursuant to this Agreement be set off against each other or against any amounts otherwise owing to any such party.

#### **19.12 Long Stop Limitation of Liability**

Notwithstanding any other provision in this Agreement or any provision in the Tax Deed of Covenant, under no circumstances shall any Vendor or any other member of the Vendors' Group have any liability whatsoever pursuant to this Agreement, or the Tax Deed of Covenant following the twentieth anniversary of the date of this Agreement.



### 19.13 Exclusivity

The Vendors and the Vendors' Guarantor will not (and the Vendors will not cause or permit any of their Affiliates to) solicit, initiate or encourage the submission of any proposal or offer from any Person relating to any (A) liquidation, dissolution or recapitalization, (B) merger or consolidation, (C) acquisition or purchase of a substantial portion of the Acquired Assets, or (D) similar transaction or business combination involving the Operations.

### 19.14 Notices

19.14.1 Any notice, consent or other communication required or permitted to be given under this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent:

In the case of any of the Vendors and the Vendors' Guarantor to such party  
care of:

BICC plc  
Devonshire House  
Mayfair Place  
London W1X 5FH

T: 011-44-171-409-8000  
F: 011-44-171-409-0070

Attention: The Company Secretary  
of BICC plc.

and

BICC Cables Corporation  
One Crosfield Avenue  
West Nyack, New York 10994  
Attention: President

T: 914-348-1400  
F: 914-348-9833



with copies to

Mayer, Brown, & Platt  
1675 Broadway  
New York, New York 10019

Attention: Mark S. Wojciechowski  
T: 212-506-2525  
F: 212-262-1910

and, in the case of any  
claim relating to environmental matters,  
additional copies to

DL Rothberg & Associates  
230 Park Avenue  
Suite 615  
New York, New York 10169  
Attention: Debra Rothberg

T: 212-490-2220  
F: 212-490-2336

In the case of any of the Relevant Purchasers or the Purchasers' Guarantor to such  
party care of:

General Cable Corporation  
4 Tesseneer Drive  
Highland Heights, KY 41076  
Fax: 606-572-8444  
Attention: Robert J. Siverd  
General Counsel

with a copy to

Blank Rome Cominsky & McCauley LLP  
One Logan Square  
Philadelphia, PA 19103-6994  
Fax: 215-569-5628

Attention: Sol Genauer

**19.14.2** Any such notice or other communication shall be delivered by hand or sent by fax or registered or certified mail, return receipt requested, or overnight courier. If sent by fax such notice or communication shall conclusively be deemed to have been given on the date transmitted if confirmed within 24 hours thereafter by a signed original sent in one of the other manners provided in this Section 19.14.2. If sent by registered or certified mail, return receipt requested such notice or communication shall conclusively be deemed to have been received three Business Days from the time of mailing in the case of domestic mail in the United States, or five Business Days from the time of mailing in the case of international mail. If sent by overnight courier, such notice or communication shall conclusively be deemed to have been received one Business Day from deposit for overnight delivery service. Any party may change its address or fax number for notice purposes by giving notice of the new address or fax number in accordance with this Section 19.14, provided that any such change of address shall not be effective unless and until received.

#### **19.15 Severance**

If any term or provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of Law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

#### **19.16 References to the Reporting Accountants**

Whenever any matter is referred under this Agreement (other than Section 9) to the Reporting Accountants for determination, the provisions of Section 9 which apply to the Reporting Accountants' determination of the Net Asset Statement shall apply to their determination of any such matter.

#### **19.17 General Services and Supply Agreement**

The Vendors and the Purchasers hereby agree that they will use their reasonable efforts to negotiate in good faith by Closing or as soon as practicable thereafter the terms and conditions of any required General Services and Supply Agreement.

## 19.18 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

## 19.19 Governing Law and Submission to Jurisdiction

19.19.1 This Agreement and the Tax Deed Of Covenant shall be construed, and the rights and obligations of the parties hereunder determined, in accordance with and governed by the internal laws of the State of New York (as permitted by Section 5-1401 of the New York General Obligations Law (or any similar successor provision)) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the parties; provided, however, that in the event a claim for an Environmental Loss is made pursuant to Schedule 16 hereof, the substantive Environmental Laws of the jurisdiction or jurisdictions where the Real Property in question is located, or where the Environmental Liability has otherwise arisen, shall apply.

19.19.2 For the purposes of any suit, action or proceeding involving this Agreement and the Tax Deed of Covenant or any other documents to be entered into pursuant to them, each of the Vendors, the Vendors' Guarantor, the Purchasers and the Purchasers' Guarantor hereby expressly submits to the jurisdiction of all federal and state courts sitting in the State of New York and agrees that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by service in hand, provided that a reasonable time for appearance is allowed, and each party agrees that such courts shall have exclusive jurisdiction over any such suit, action or proceeding commenced by either or both of said parties. Each of the Vendors, the Vendors' Guarantor, the Purchasers and the Purchasers' Guarantor hereby irrevocably waives any objection that it may have now or hereafter to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement and the Tax Deed of Covenant or any other documents to be entered into pursuant to them, brought in any federal or state court sitting in the State of New York and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.



19.21.4 Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any Judgment or other settlement in any other courts.

## 19.22 Currency

19.22.1 With respect to any sum due hereunder, or under the Tax Deed of Covenant or under any other document to be entered into pursuant hereto or thereto which is denominated in a currency other than British pounds sterling, if it is necessary to convert such sum into British pounds sterling, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the applicable party could purchase British pounds sterling, with such sum denominated in such other currency, at the Hong Kong and Shanghai Banking Corporation Limited in London, England, at the close of business on the Business Day immediately preceding the day on which the conversion is to be made, without regard to any premiums and costs of exchange payable in connection with such purchase.

19.22.2 With respect of any sum due from any party to any other party hereunder, or under the Tax Deed of Covenant or under any other document to be entered into pursuant hereto or thereto which is denominated in British pounds sterling, the obligation of the party which owes such sum shall, notwithstanding any Judgment in a currency other than British pounds sterling, only be discharged to the extent that on the Business Day next succeeding receipt by such other party of any sum adjudged to be so due in such other currency, such party may, in accordance with normal banking procedures, purchase British pounds sterling with such other currency at the Hong Kong and Shanghai Banking Corporation Limited in London, England or its successor. If the British pounds sterling so purchased are less than the sum originally due to such party in British pounds sterling, each of the parties against whom such Judgment is rendered agrees, as a separate obligation and notwithstanding any such Judgment, to indemnify the parties to whom such Judgment is granted against such loss.

19.22.3 If it is necessary to convert an amount (the **Original Amount**) due hereunder, under the Tax Deed of Covenant or any other document to be entered into pursuant hereto or thereto expressed in either Canadian Dollars or U.S. Dollars (the **Original Currency**), the amount expressed in the other currency shall be the sum which would be required to buy the Original Amount of the Original Currency using the noon spot rate exchange for New York City interbank transactions applied in converting the other currency into the Original Currency published by The Wall Street Journal (Eastern Edition) for such date.

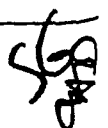
19.21.4 Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any Judgment or other settlement in any other courts.

## 19.22 Currency

19.22.1 With respect to any sum due hereunder, or under the Tax Deed of Covenant or under any other document to be entered into pursuant hereto or thereto which is denominated in a currency other than British pounds sterling, if it is necessary to convert such sum into British pounds sterling, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the applicable party could purchase British pounds sterling, with such sum denominated in such other currency, at the Hong Kong and Shanghai Banking Corporation Limited in London, England, at the close of business on the Business Day immediately preceding the day on which the conversion is to be made, without regard to any premiums and costs of exchange payable in connection with such purchase.

19.22.2 With respect of any sum due from any party to any other party hereunder, or under the Tax Deed of Covenant or under any other document to be entered into pursuant hereto or thereto which is denominated in British pounds sterling, the obligation of the party which owes such sum shall, notwithstanding any Judgment in a currency other than British pounds sterling, only be discharged to the extent that on the Business Day next succeeding receipt by such other party of any sum adjudged to be so due in such other currency, such party may, in accordance with normal banking procedures, purchase British pounds sterling with such other currency at the Hong Kong and Shanghai Banking Corporation Limited in London, England or its successor. If the British pounds sterling so purchased are less than the sum originally due to such party in British pounds sterling, each of the parties against whom such Judgment is rendered agrees, as a separate obligation and notwithstanding any such Judgment, to indemnify the parties to whom such Judgment is granted against such loss.

19.22.3 If it is necessary to convert an amount (the **Original Amount**) due hereunder, under the Tax Deed of Covenant or any other document to be entered into pursuant hereto or thereto expressed in either Canadian Dollars or U.S. Dollars (the **Original Currency**), the amount expressed in the other currency shall be the sum which would be required to buy the Original Amount of the Original Currency using the noon spot rate exchange for New York City interbank transactions applied in converting the other currency into the Original Currency published by The Wall Street Journal (Eastern Edition) for such date.



## 19.23 Certain Restrictive Covenants

19.23.1 The covenants set forth in this Section 19.23 (the **Restrictive Covenants**) are a material part of this Agreement and are an integral part of the obligations of the Vendors hereunder, such Restrictive Covenants are supported by good and adequate consideration, and such Restrictive Covenants are reasonable and necessary to protect the legitimate business interests of the Purchasers.

19.23.2 During the period beginning on the Closing Date and ending on the third anniversary of the Closing Date, except with the Purchasers' prior written consent, the Vendors shall not, directly or indirectly, in any capacity, in the United States or Canada:

(a) carry on or otherwise engage or have an interest in any capacity (whether for profit or otherwise) in, any business which competes with any of the Operations as operated on the Closing Date anywhere in the world where the Operations are conducted on the Closing Date;

(b) in relation to the Operations, solicit, seek to obtain or accept orders from or otherwise do business with or solicit directly or indirectly any other person to obtain orders from or do business with any person or firm who or which (i) was a customer, supplier or agent of the Vendors in relation to the Operations at any time during the two years prior to Closing, or (ii) at the date of Closing was negotiating to do business with the Vendors in relation to the Operations, or otherwise interfere or seek to interfere with the supply of goods or services to or by the Operations, provided that this Section 19.23.2 shall not prohibit the Vendors from doing business with any person who is or was a customer, supplier or agent of the Vendors prior to Closing in relation to any business of the members of the Vendors' Group which is not being transferred under this Agreement; or

(c) solicit, with a view to employment, directly or indirectly, any Senior Employee who is a Continuing Employee (**Prohibited Employees**) (provided that nothing in this Section 19.23.2(c) shall prevent any member of the Vendors' Group from making generalized employment searches, by advertisement or by engaging firms to conduct searches which are not focused on Prohibited Employees).

19.23.3 The restrictions in clause 19.23.2 shall not operate to prohibit:

(a) the Vendors from holding in aggregate up to 10% of the capital stock of any person if any class of capital stock of such person is listed on a national market quotation system or recognized stock exchange; or

(b) the Vendors from carrying on any business not sold to the Purchasers pursuant to the terms of this Agreement, in particular the business presently carried on under the name "BICC Brand Rex" with manufacturing facilities outside the United States, Canada and Mexico to be renamed "Brand Rex."

19.23.4 Each of the Vendors expressly acknowledges that it would be extremely difficult to measure the damages that might result from any breach of the Restrictive Covenants, and that any breach of the Restrictive Covenants will result in irreparable injury to the Purchasers for which money damages could not adequately compensate. If a breach of the Restrictive Covenants occurs, then the Purchasers shall be entitled, in addition to all other rights and remedies that they may have at law or in equity, to have an injunction issued by a court of competent jurisdiction enjoining and restraining the Vendors and all other persons involved therein from continuing such breach. The existence of any claim or cause of action that either of the Vendors or any such other person may have against any member of the Purchasers' Group shall not constitute a defense or bar to the enforcement of any of the Restrictive Covenants.

19.23.5 If any Restrictive Covenant, or any part thereof, or the application thereof, is construed to be invalid, illegal or unenforceable, then each other Restrictive Covenant, or the other portions of any such Restrictive Covenant, or the application thereof, shall be affected thereby and shall be enforceable without regard thereto. If any of the Restrictive Covenants is determined to be unenforceable because of its scope, duration, geographical area or other factor, then the court making such determination shall have the power to reduce or limit such scope, duration, area or other factor, and such Restrictive Covenant shall then be enforceable in its reduced or limited form.

#### **19.24 Reliance by Purchasers; Disclosure of Representation and Warranties**

Notwithstanding the right of Purchasers to investigate the business, Acquired Assets and financial condition of the Vendors and the Operations, and notwithstanding any knowledge obtained or obtainable by Purchasers as a result of such investigation (including pursuant to Section 7.3.1(ii) or 7.3.2), Purchasers have the unqualified right to rely upon, and have relied upon, each of the Warranties, and Purchasers' right to indemnification based on the Warranties will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being

acquired) whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of any such Warranty.

#### **19.25 Section Headings**

Section and subsection headings in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and shall not affect its interpretation.

#### **19.26 References**

All words used in this Agreement shall be construed to be of such number and gender as the context requires or permits.

#### **19.27 Cooperation**

The parties hereto agree to cooperate fully with each other and to execute and deliver such further documents, certificates, agreements and instruments and to take such other actions as may be reasonably requested to evidence or reflect the transactions contemplated by this Agreement and to carry out the intent and purposes of this Agreement.

#### **19.28 Bulk Sales**

Purchasers hereby waive compliance by the Vendors with Bulk Sales Laws with respect to the transactions contemplated hereby and in connection herewith.



In Witness Whereof this Agreement has been duly executed as of the date first above written.

BICC CABLES CORPORATION

By [Signature]  
Name: H.P. BERNDORFF  
Title: VICE PRESIDENT

PYROTENAX USA INC.

By [Signature]  
Name: H.P. BERNDORFF  
Title: VICE PRESIDENT

BICC CABLES CANADA INC.

By [Signature]  
Name: H.P. BERNDORFF  
Title: SECRETARY - TREASURER

BICC PLC

By [Signature]  
Name: PETER ZINKIN  
Title: DIRECTOR

GK TECHNOLOGIES,  
INCORPORATED, in its capacity as US  
Purchaser and Canadian Purchaser

By [Signature]  
Name: ROBERT J. SIVERO  
Title: EXECUTIVE VICE PRESIDENT

GENERAL CABLE CORPORATION

By [Signature]  
Name: ROBERT J. SIVERO  
Title: EXECUTIVE VICE PRESIDENT

[Signature]

## Schedule 1

### Operations

The Operations shall include, without limitation, the following operations:

#### A. Vendor Owned Real Properties

- 1 **Marshall, TX Site**  
Design, manufacture and distribution of utility cables,  
Technology research and development
- 2 **Malvern, AK Site**  
Design, manufacture and distribution of utility cables
- 3 **DuQuion, IL Site**  
Design, manufacture and distribution of utility cables
- 4 **Willimantic, CT Site**  
Design, manufacture, marketing and distribution of cable and accessories.  
The site also includes executive offices and operations for the Brand-Rex product lines
- 5 **South Hadley, MA Site**  
Design and manufacture of bare cables
- 6 **Jackson, TN Site**  
Design, manufacture, distribution and assembly of Brand-Rex cable and accessories
- 7 **Marion, IN Site**  
Design, manufacture and distribution of Brand-Rex cables and accessories
- 8 **La Malbaie, Quebec Site**  
Design, manufacture and distribution of utility cables and aluminum strip
- 9 **St. Jerome, Quebec Site**  
Design, manufacture and distribution of utility cables
- 10 **Moose Jaw, Saskatchewan Site**  
Design, manufacture and distribution of utility cables
- 11 **Trenton, Ontario Site**  
Design, manufacture, distribution and marketing of mineral insulated electrical cable and electronic controllers. The site is also used for research and development, includes customer service area, executive offices and operations management for BICC-Pyrotex.

#### B. Leased Properties

- 12 **Indianapolis, IN Site**  
Technology research and development center

- 13 Indianapolis, IN Site**  
Manufacture of Polymeric compounds for cable insulation
- 14 West Nyack, NY Site**  
Headquarters for the North American Business  
Headquarters for the utility cable business
- 15 Calgary, Alberta Site**  
Sales offices for BICC Cables Canada Inc.
- 16 Montreal, Quebec Site**  
Sales offices for BICC Cables Canada Inc.
- 17 Toronto, Ontario Site**  
Headquarters for BICC Cables Canada Inc.  
Sales offices for the certificate insurers and for BICC-Pyrotex
- 18 Edmonton, Alberta Site**  
Light assembly of mineral insulated cable units and electronic controllers
- 19 Houston, Texas Site**  
Light assembly and distribution center for mineral insulated cables
- 20 Syracuse, New York Site**  
Sales and administrative office for BICC-Pyrotex products manufactured in Canada and sold in the US.

*CFE*